United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

756

BRIEF FOR APPELLANT
AND
JOINT APPENDIX
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,559

THOMAS S. HUNTER, ET. AL,

Appellants,

v.

CENTER MOTORS, INC.,

Appellee.

Appeal from the United States District Court for the District of Columbia

---

CLEMENT THEODORE COOPER

918 F Street, N.W.
Suite 302
Washington, D. C. 20004

ATTORNEY FOR APPELLANTS

QUESTIONS PRESENTED

(1) Whether the trial court erred in directing a verdict for defendant at the close of plaintiff's case?

(2) Whether a retailer or seller who sells new and used products which are inherently dangerous to life and limb is liable for bodily injuries and death which results from defects in those products while the products are being used according to the purpose for which they are intended?

(3) Whether a retailer or seller of new and used products which are inherently dangerous to life and limb is liable under the Doctrine of Strict Tort Liability for injuries or death caused by use of those products containing defects which he knows or should have known to exist at the time of sale of those products?

(4) Whether the Doctrine of Strict Tort Liability should apply in wrongful death and personal injury suits in the District of Columbia?

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of the lower court was invoked by virtue of Title 28 U. S. C. 1331(a), pursuant that Courts authority to entertain original jurisdiction

of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs.

The jurisdiction of this Honorable Court is invoked under 28 U. S. C. 1291 pursuant to its authority to entertain jurisdiction of Appeals from all final decisions of the District Courts for the District of Columbia Circuit.

STATEMENT OF THE CASE

On January 20, 1964, plaintiff-decedent, Hector Hunter purchased a used 1958 Ford-Fairlane from the defendant, Center Motors, Incorporated, under a conditional sales contract. (See J. A. page 51). The contract provided, inter, that the automobile was sold "as is" except for the written warranty, which provided that, inter alia, "This 50-50 guarantee means that the dealer will make any necessary mechanical repairs in his shop at a cost to the buyer of only 50% of the Dealer's current list on both parts and labor . . . . . ." The automobile in question was taken through District of Columbia Auto Inspection Station on March 27, 1964. The automobile was rejected for the following reasons: Steering alignment defective,

auxiliary brakes defective, directional signal defective, brake equilization defective, rear lights defective, steering operation defective, including king pins, ball joints, worm and sector, tie rod ends, drag link, control arms, shock absorbers, springs and shackles, axles, wheel bearings, realignment.

After the automobile had been rejected for obvious defective conditions, it was taken back to the Defendant, Center Motors, for correction and repairs. Center Motors performed repairs on the automobile in order that it might pass inspection and again returned it to Hector Hunter, who, again, took it through a second inspection on April 8, 1964. At that time, the automobile was passed as meeting the minimum District of Columbia Automobile Standards. However, for months following April 8, 1964, Hector Hunter had experienced considerable mechanical difficulty with the automobile and on a number of occasions, took the automobile back to Center Motors. Finally, on or about December 12, 1964, Hector Hunter again took the automobile back to Center Motors and placed the car on the lot at Center Motors advising them that he did not want the automobile any longer and refused to continue to make payments on the automobile. Instead of making a second effort to correct the defective automobile, Center Motors through the Assignee, filed suit against

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Hector Hunter for payments on the note. That suit was entitled "Master Credit Service, Inc., Assignee of Center Motors, Inc. v. Hector Hunter, Number C 19920-64" District of Columbia Court of General Sessions. A judgment was entered against Hector Hunter and his wages at Washington Gas Light Company, were attached in order to satisfy the judgment. Acting upon advice, Hector Hunter, in order to avoid dismissal from his employment and inasmuch as he had paid the judgment of $43.00, took possession of the automobile and continued to operate it.

On March 22, 1965, while operating the automobile on Route 95, North of Richmond, Virginia, (ten other plaintiffs to this suit, being passengers therein), the steering locked, and was uncontrollable, thereby causing Hector Hunter to lose control of the automobile and it left the highway, ran over into an embankment and hit a tree. Hector Hunter was killed instantly, their minor daughter, Janice Ann Hunter, was also killed. Another infant, Bernard Armstrong, was also killed. The two minor sons of Hector Hunter, Anthony and Ray Hunter, were permanently injured, as well as Peggy Armstrong, Elmer Lee Armstrong, Lisa Gilmore and Louise Gilmore, minor childern of Mary Lois Gilmore, who also lost her life in the same accident.

A claim letter was mailed to the Defendant on November 8, 1965 and acknowledged, through its Insurance

Carrier, Travelers Insurance Company, on November 23, 1965. The clam was thereafter rejected.

Plaintiffs filed suit in the United States District Court for the District of Columbia on March 18, 1966 (JA 1 & 3) seeking damages for wrongful death and personal injury as a result of negligence and Breach of Warranty by the defendant, Center Motors, Inc. On April 6, 1966, defendant filed it's Answer and Counter-claim against plaintiffs. On April 18, 1966, plaintiffs filed their Answer to defendant's counter-claim (JA 15A). The defendant, on April 10, 1967 (JA 102) filed a Motion for Summary Judgment and plaintiffs filed their opposition to that Motion on April 19, 1967. (JA 115). The Motion for Summary Judgment and opposition thereto was argued on May 22, 1967 before the Honorable Judge Jones. The Motion was taken under advisement and on May 31, 1967 there was entered on the docket an Order granting Summary Judgment to the defendant (JA 137). It is from the ruling on the Motion for Summary Judgment that plaintiff prosecuted an appeal and on June 16, 1967, plaintiffs filed Notice of Appeal. (JA 138)

On August 23, 1968, this Honorable Court decided Hunter, et al v. Center Motors, Inc. (Cited: 400 F. 2nd 786). This court reversed and remanded the case back to the Trial Court for trial. In this Court's opinion, it held:

> "That the depositions raised material issues of fact as to whether the accident was caused by mechanical defects or by driver's having gone to sleep."

The Court in that opinion further stated,

> "That law is far from clear, however, as to what is or should be the obligations of a used car dealer with respect to the physical condition of the car he sells. Apart from contractual warranty, it is obviously not a completely open-ended liability, but we would need more facts than are now available to say whether appellants could make out a case warranting submission to a jury on any theory."

The cause was thereupon retried in the United States District Court for the District of Columbia before the Honorable Leonard P. Walsh, U. S. District Judge, on July 14 and 16, 1969. During the course of the trial, appellants produced evidence by way of testimony and documentary evidence to show facts set forth hereinbefore in this Statement of the Cause. These facts need not be reiterated here. After hearing all of the evidence adduced and upon Motion for Directed Verdict made by the appellee, the trial court entered a Directed Verdict at the close of the appellant's case.

Appellants thereupon filed notice of appeal from that decision. (JA 139).

STATEMENT OF POINTS

1. The Trial Court erred in granting a Directed Verdict for the defendant at the close of plaintiffs case.

POINT: Plaintiffs presented evidence sufficient to warrant that the case be submitted to the trier of facts.

2. POINT: A retailer or seller who sells new and used products which are inherently dangerous to life and limb is liable for bodily injuries and wrongful death which results from defects in those products which are being used according to the purpose for which they are intended.

3. POINT: A retailer or seller of new and used products which are inherently dangerous to life and limb is liable under the Doctrine of Strict Tort Liability, for injuries or death caused by use of those products where it is found that the products contained defects which he knows or should have known to exist at the time of sale.

4. POINT: The Doctrine of Absolute Strict Tort Liability should apply in the District of Columbia in wrongful death and personal injury suits.

SUMMARY OF ARGUMENT

Realizing, of course, that negligence alone does not equal liability and unless the negligence proximately caused the accident and subsequent deaths and bodily injuries complained of herein, plaintiffs could not recover, plaintiffs produced, during the trial, sufficient evidence to warrant that the case be submitted to the Trier of Facts. A Trial Court, sitting in the presence of a jury, cannot usurp the jury's function in determining the weight and sufficiency to be given the evidence heard during the course of a trial. Once questions of fact have been raised, it is the Trier of Fact who must resolve the dispute. A Trial Court cannot infringe upon the functions specifically delegated to a jury. To hold contrary to this well established rule would bar plaintiffs from having their cause determined by a jury which was their right to demand.

While the District of Columbia has made sound attempts through the Courts to compensate persons who sustain bodily injuries and wrongful death as a result of defective products, Appellants strenuously argue here that Sellers of Used Automobiles, who flagrantly disregard a legal and social duty to protect the members of the

public by placing defective products in the hands of consumers, should bear strict responsibility for injury and death occasioned by use of those products. New automobiles are no more dangerous than a used automobile, for both are, without a doubt, dangerous instrumentalities, from which or out of which much human misery, suffering and tragedy seem to flow.

The laws of Strict Warranty Liability is not sufficient to protect the public-consumer, who must pay for merchandise which he uses. A judicial tightening-up of the law of products liability will surely solve the common plague. Appellants urge this Honorable Court to adopt the modern view of Strict Tort Liability in order to assure financial recompense for those victims, as appellants herein, who cannot afford to absorb the losses occasioned by the tortuous misconduct of retailers and sellers of products which are inherently dangerous to human life and limb.

It is for the foregoing reasons, among other reasons argued elsewhere in Appellants' brief, that this Honorable Court is now asked to review the record in this cause.

ARGUMENT

I

THE TRIAL COURT ERRED IN DIRECTING A VERDICT FOR THE DEFENDANT AT THE CLOSE OF PLAINTIFFS' CASE. QUESTIONS OF FACT WERE PRESENTED AND SHOULD HAVE BEEN RESOLVED BY THE TRIER OF FACT RATHER THAN THE COURT.

As a general rule, no inference of negligence whatever arises from the mere happening of the accident. The legal presumption is that reasonable care was exercised by both parties. The burden of proof is therefore upon the party charging negligence to overcome the presumption of due care by a preponderence of the evidence and to prove that negligence as established was the proximate cause of the accident. F. W. Woolworth Co. v. Williams, 59 App. D. C. 347, 41 F. 2nd 970 (1930); Martin v. U. S., 96 U. S. App. D. C. 294, 225 F. 2nd 945 (1955); Danzansky v. Zimalist, 70 U. S. App. D. C. 234, 105 F. 2nd 457 (1939). The question here is simply whether plaintiffs met the burden of raising factual questions as to the proximate cause of the accident and the deaths and bodily injuries which resulted from the accident. First, an examination of the acceptable definition of "proximate cause" must

be eluded to here in order to place appellants argument in proper perspective. In this jurisdiction, "proximate cause" has been judicially defined as that cause which, in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. It is the efficient cause - the one that necessarily sets in operation the factors - that accomplish the injury. See Howard v. Swagart, 82 U. S. App. D. C. 147, 161 F. 2nd 651 (1947). In light of the definition adopted by this Honorable Court, examine the proof proffered by the appellants during the trial of this cause in the Trial Court below. Appellants called as their first witness one Harvey C. Smith who made an examination of the inspection records held at the Department of Motor Vehicles. During the cause of Smith's testimony, there was testimony that Smith appeared at the Department of Motor Vehicles and examined the inspection records pertaining to the automobile in question. That upon inspecting the records of the Department of Motor Vehicles, summary notes were taken which were later clearly transcribed in legible form by the witness. Over objection of counsel for the appellee, Smith was allowed to refresh his memory

by reading from the memorandum written by him. According to the inspection records the following defects were found in the automobile in question: steering alignment defective; auxiliary brakes defective; directional signals defective; brakes equilization defective; rear lights defective; steering operation defective; which includes drag link, control arms, shock absorbers, spring and shackles, axle, wheel bearing and realignment. That the automobile again was taken for inspection on April 8, 1964. At that time, it was passed. (See Transcript of Trial, pp. 31 - the record herein). As an adjunct point, the memorandum to which the witness referred was not allowed in evidence even though proper foundation was laid for it's admission. Testimony was that according to one Noel K. Dawson, Chief Motor Vehicle Inspector, the original records were held for a period of three years and later destroyed by burning. (See pp. , Transcript of trial - Record herein).

Appellants then called Elmer Armstrong to testify. Upon a clear showing why Elmer Lee Armstrong could not again appear for trial, the Court allowed the Deposition of Elmer Armstrong to be read to the jury. The reading of the Deposition of Elmer Lee Armstrong then became clear and cogent evidence. This, of course, is within the spirit of the Federal Rules of Civil Rule. According

to the testimony of Elmer Lee Armstrong, while traveling to the District of Columbia on Route 95 North of Richmond, Virginia, Hector Hunter passed an automobile and came back on their side of the road. That Hector looked at Armstrong and said, "Elmer, the steering is locked, I can't straighten this thing up," and I said, "Jam on the brakes, jam on the brakes," and he mashed the brakes and it had no brakes. "It had no brakes that is all I remember. That's all I remember." (See J. A. 23) In order to introduce photographic evidence showing the visual scene of the accident, the testimony of Officer Pugh was read by co-counsel for appellants and photographs were introduced into evidence. (See Trans. of Trial, pp. 48 - 55) The official accident report was likewise introducted into evidence. (See Trans. of Trial, pp. 55). Notably, appellee did not introduce any evidence to controvert the evidence already proffered by the appellants. Rather, upon Motion for Directed Verdict, appellee contended that appellants had not shown any facts which would warrant a submission of the cause to the jury. Upon hearing oral arguments for and against the Motion for Directed Verdict, the Court ruled that:

> ".... The court has heard the testimony that has been submitted. The court has also had the opportunity of reading the Court of Appeals decision on the summary judgment which was granted by Judge Jones.

> The Court, looking upon the plaintiffs' testimony in its most favorable light, is of the opinion that the plaintiffs have failed to make out the prima facie case, and the Court grants the Motion for a Directed Verdict and the Court is in the position, if counsel so desires, to prepare its own findings of fact and conclusions by tomorrow morning. Unless the counsel wants to submit their own proposed findings or memorandum. Because the Court recognizes the importance of this particular case."

First of all, appellants contend that the Trial Court has completely misunderstood what this Honorable Court held in it's opinion in Hunter v. Center Motors, Inc. 400 F 2nd 786 (1968). This Court held in Hunter, supra. that the depositions raised material issue of fact as to whether accident was caused by mechanical defects or by driver's having gone to sleep. Notably, the depositions referred to in the court opinion were, during the course of this cause below, introduced into evidence and became a part of the evidence in support of appellants' cause. The substantive contents of statements made during the course of the depositions did not lose their force and factual effect during the course of the trial. Thus, material issues of fact were likewise raised during the course of the trial below. Consequently, the appellant's cause should have

submitted to the jury for determination. It is not for the court to question the sufficiency or truth of statements made by witnesses during the course of a trial. A review of the Transcript of the Trial clearly intimates that the trial court felt that question of credibility or truthfulness of the witness and use of depositions reflected the Court's feeling. As the trial court stated:

> "As you well know the Court naturally feels very strongly on the deposition even though the counsel for the defendants use depositions. The jury is trying to weigh the credibility, the weight to be given to testimony. ..... So, the deposition is comparatively weak." (See Trans. of Trial pp. 43-44)

Firstly, to alter the spirit of the Federal Rules of Civil Procedures in the ultimate use and reasons for preserving testimony by way of deposition clashes with the very historical purpose of the reason de etre of Rule 26, Federal Rules of Civil Procedure. Under Rule 26, a deposition may be taken for the purpose of preserving evidence for trial. It may also be used at the trial as evidence if the witness is dead, out of the state or more than 100 miles from the place of trial or hearing, etc. Elmer Lee Armstrong, for instance, whose testimony was read (at the juncture of the trial as a witness rather than party plaintiff) lived in Raleigh, North Carolina which is well over the 100 mile radius

from the point of trial. Thus, the testimony of Armstrong had the full force and effect of live testimony and that testimony presented a question of material fact. It was not for the trial court to determine or even express concern over the question of credibility of Armstrong's testimony. The rule is undisputed that the credibility of witnesses and the weight to be accorded their testimony are questioned peculiarly within the province of the jury. Crowell v. Duncan, 145 Va. 489, 134 S. E. 576. Even where the trial court expressed some doubt as to the defendant's liability, the case should have been submitted to the jury. This practice has been commended by our Court of Appeals in Seganish v. District of Columbia Safeway Stores, 132 U. S. App. D. C. 117, 406 F. 2nd 653 (1968). This court has reasoned, time and time again, that our laws set standards designed to protect society's members from unreasonable exposure to potentially injurious hazards. The duty to exercise reasonable care is one of the standards, to say the very least. See Washington Hospital Center v. Butler, 127 U. S. App. D. C. 379, 384 F 2nd 331 (1967); McGettigan v. National Bank of Washington, 115 U. S. D. C. 384, 320 F. 2nd 703 (Cert. Denied, 375 U. S. 943, 84 S. Ct. 348) (1963) (quoting RESTATEMENT OF TORTS #282 (1934); Richardson v. Gregory, 108 U. S. App. D. C. 263, 266, 281 F. 2nd

626, 629 (1960); Kendall v. Gore Properties, 98 U. S. App. D. C. 378, 236 F. 2nd 673 (1956). Here however, the degree of care in selling a substandard dangerous instrumentality is far greater than the mere ordinary care heretofore imposed upon sellers of used automobiles. The better view is to impose a duty of care upon a defendant which is measured by the risks which his actions might create. In other words, the greater the danger, the greater the care which must be exercised. Richardson v. Gregory, supra. See also: Foy v. Friedman, 108 U. S. App. D. C. 176, 177-178, 280 F. 2nd 724, 725-726 (1960); Hecht Co. v. Jacobson, 86 U. S. App. D. C. 81, 180 F. 2nd 13 (1950); McKay v. Parkwood Owners, Inc., 78 U. S. App. D. C. 260, 139 F. 2nd 385 (1943).

The defendant would have this Honorable Court believe that because of the allegations of negligence of the driver (sleeping at the wheel), they should be absolved from liability. However, even if the Court assumed that defendant's allegations of concurring negligence are true (which of course they are not true), defendant cannot escape the consequences of his own negligence merely because another may have contributed to the injury by his wrongful act. Liability is still imposed upon him. Metropolitan R. R. Co. v. Jones, 1 App. D. C. 200, 205 (1893).

In this jurisdiction, the rule has evolved, that the defendant need not forsee the precise injury, nor should he have had notice of the particular method in which a harm would occur, if the possibility of harm was clear to the ordinary prudent eye. Boland v. Love, 95 U. S. App. D. C. 337, 222 F. 2nd 27 (1955); U. S. V. Morow, 87 U. S. App. D. C. 84, 182 F. 2nd 986 (1950); Hitaffer v. Argonne Co. 87 U. S. App. D. C. 57, 183 F. 2nd 811 (1950). Notwithstanding the requirements imposed by this Honorable Court hereinbefore, the facts in this cause make foreseeability of serious bodily harm and death readily apparent even to the one-eyed men. The sale of a dangerous instrumentality, with reckless abandon, falls far below the expectations of reasonable prudent men. The defendant was well aware of the multiple defects of the automobile which he sold to Hector Hunter. Moreover, it was the appellee who stipulated in evidence the fact that the automobile was presented for inspection and first failed to pass; that the automobile was returned for repairs to Center Motors, Incorporated, was repaired there under the terms of the "Used Vehicle Guarantee," and that Hector Hunter then took it through the D. C. Inspection which it passed on April 8, 1964; that Center

Motors is not engaged in the sale of new automobiles but sells only "used automobiles, which are sold as is" except for the limited written guarantee quoted (sic). (See pp. 21 Trans. of Trial. Record herein). Thus, Center Motors, by its own admission admits that it deals in the sale of used automobiles rather than new automobiles and sells these automobiles "as is." Of course, realizing the nature and extent of their business practices but with reckless abandon of concern for the consumer public with which it does business on a day-to-day basis.

Appellants met the burden of proof imposed upon them in order to warrant that the case be submitted to the jury for determination. In a somewhat parallel case where an action was brought for wrongful death of the deceased which allegedly resulted from his having been dragged or thrown under a bus when his clothing caught in the rear door of the bus from which he was alighting, and judgment rendered for the plaintiff, on appeal, it was held that the evidence did present questions for the jury as to whether deceased had been a paid passenger on the bus, as to whether the defendant had been negligent in starting the bus before the deceased had safely

alighted therefrom and whether such negligence was the was the proximate cause of deceased clothing to be caught within the doors of the bus and decedent to be dragged or thrown under the bus. Capital Transit v. Howard, 90 U. S. App. D. C. 359 (1952). The weight of the testimony of witnesses in the trial of an action for wrongful death and their credibility are matters for the determination of the jury and not for the Court. Wabisky v. D. C. Transit System, Inc., 114 U. S. App. D. C. 22, 309 F. 2nd, 317 F. 2nd, 317 (1962). Even where there is conflicting or doubtful evidence, the facts are for the jury's determination and not for the Court's determination. Ramsey v. Ross, 66 App. D. C. 186, 85 F. 2nd 685; Baltimore & P. R. Co. v. Mackey, 15 S. Ct. 491, 157 U. S. 72 (1895). This Court has opinioned in the past that great caution should be exercised by a trial court before directing a verdict for defendant and it ought never to be granted unless it clearly appears that there is no evidence to affect the party in whose favor it is made. See Capital Traction Co. v. Atwater, 37 App. D. C. 29 (1911). In reviewing the record of this cause before actual trial, this Honorable Court held, even at that juncture, that the depositions raised material issues of fact as to whether the accident was caused by mechanical defects or by the driver's having gone to sleep.

Hunter v. Center Motors, Inc., supra.

In view of the foregoing, it is abundantly clear that the trial court erred in directing a verdict for the defendant at the close of the plaintiffs' case.

II.

A RETAILER OF NEW AND USED PRODUCTS WHO SELLS PRODUCTS, WHICH ARE INHERENTLY DANGEROUS TO LIFE AND LIMB, TO THE GENERAL PUBLIC, AND WHOSE PRODUCTS BECOME COMINGLED WITHIN THE STREAM OF INTRASTATE AND INTERSTATE COMMERCE, AND THROUGH NORMAL USE, DEFECTS IN THOSE PRODUCTS CAUSE DEATH OR BODILY INJURY, IS LIABLE UNDER THE DOCTRINE OF STRICT TORT LIABILITY.

A. History and Legal Evolution of the Law of Warranty.

At Common Law, the theory of implied Warranty actually evolved in the area of commercial transactions and their affiliates sometime

during the late 17th century. During the 18th century, the theory of implied Warranty began with some degree of acceleration. Simply stated, where one purchased a cargo of a particular commodity such as wheat, hemp, copper sheathing, the implied warranty in those commercial transactions was that such products would comply with certain minimum standards generally known throughout the market place. These standards were based upon the concepts of resalability, usability or merchantability and reasonable fitness for use. The Common Law Warranty, implied warranty, continued to develop through several centuries in England. Finally, the Common Law concept of Warranty was codified in the English Sale of Goods Act. The English Sale of Goods Act actually formed the basis of the Uniform Sales Act 1/, which was adopted in the United States during the early 20th century and subsequently adopted in many of the several states and the District of Columbia. Today, the new Uniform Commercial Code has almost completely replaced the Uniform Sales Act. The Uniform Commercial Code, Section 2-213 provides that:

1/ Uniform Sales Act #12, 14 and 16.

"(1) Express warranties by the seller are are created as follows:

(A) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(B) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to that description.

(C) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "Warrant" or "Guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of value of the goods or a statement purporting to be merely the seller's opinion or commendations of the goods does not create a warranty."

The Uniform Commercial Code was adopted in this jurisdiction on January 1, 1965 and thus represents the law of warranty in the District of Columbia. However, in order to fully appreciate the evolution of the law of warranty, an analysis of the very early decisions must be brought into focus.

In some legal quarters, scholars have expressed the view that Warranty had its origin as a pure action

of tort, and the law of warranty found its way into the law of sales.2/ The leading test case, historically, was the case of Winterbottom v. Wright, 10 M. & W. 109, 114, 132 Engl. Rep. (1842) 402, 405 (1942). In Winterbottom, supra, the rule was established that a remote purchaser could not maintain an action of negligence against a remote manufacturer of a defective article because of lack of privity. Then came Thomas and Wife v. Winchester, (1852) 6 N. Y. 397. Winchester, supra, the exception to the general rule enunciated in Winterbottom, supra. In Winchester, supra, was that a manufacturer was liable to the remote purchaser of a defective article which was inherently or imminently dangerous. The basis for the exception in Winchester, supra, was that a manufacturer of a dangerous instrumentality is under a duty to reasonably inspect his product and upon failing to do so, may subject himself to liability.

In the United States, the crucial test of the law of warranty was brought to fare in McPherson v. Buick Motor Company, 217 N. Y. 382, 111 N. E. 1050 (1916). In McPherson v. Buick Motor Company, supra, the New York Court held that a remote purchaser may recover from a manufacturer even though there is no privity of contract between them. The rationale in McPherson, supra, clearly suggests that where the product sold is considered dan-

2/ See Ames, The History of Assumpsit, 2 Harv. L. Rev. 1, 8 (1888) Hamilton, The Ancient Maxim, Caveat Emptor, 40 Yale L. J. 113 (1931), Comment, 63 Colum. L. Rev. 515, 52nd (1963).

gerous instrumentality, the manufacturer should bear the responsibility because he had the opportunity to make a thorough inspection of the article before placing the article on the market. The celebrated Justice, Benjamin Cardozzo, in writing the opinion in McPherson, supra, clearly formulated on Winterbottom v. Wright, supra. Gradually, it is seen that the exception to the General Rule first enunciated in Winterbottom v. Wright, supra, had such force and impact that the general rule was destroyed and the exception in McPherson v. Buick Motor Company, supra, became the law.

B. The Law of Warranty As Stated Today.

For many years following McPherson v. Buick Motor Company, supra, the law of warranty was given strong impetus in Food and Drug cases. Thus, we saw the rule of law evolve, strongly stating that manufacturers, processors, packers, etc. of food products must in performing their duty to exercise care commensurate with the risk of harm inherent in the product in which they deal, exercise care to see that their products are wholesome and free from noxious and deleterious organisms and impurities. Armour & Co. v. Leasure (1939) 177 Md. 393, 9A 2nd 572; Clover Farms Dairy v. Ellin (1950) 195 Md. 663, 75 A. 2nd 116; Arena v. John P. Squire Co. (1947)

321 Mass. 423, 73 N. E. 2nd 8361; Lore v. De Simone Bros. (1958) 12 Misc. 2nd 174, 172 NYS 2nd 829; Swift & Co. v. Wells (1959) 201 Va. 213, 110 S. E. 2nd 203. In the District of Columbia, as in a number of other enlightened jurisdictions the rule has it that, the keeper of a hotel, dining car, cafe, or other public eating place, engaged in the business of serving food to customers is bound to use due care to see that the food so served is fit for human consumption and may be eaten without causing sickness or endangering life by reason of its condition. Picard v. Smith (1930) 59 App. D. C. 291, 40 F. 2nd 803; Ash v. Childs Dining Hall Co. (1918) 231 Mass. 86, 120 N. E. 396; Rickner v. Ritz Restaurant Co. (1935) 13 N. J. Misc. 818, 181 A. 398. And, the rule stated before, with depth, brevity and clarity applies to other products as well, particularly where those products are intended for human consumption or use such as beverages. See Cordell v. Macon Coca-Cola Bottling Co. (1937) 56 Ga. App. 117, 192 S. E. 228; LaGrotte v. Bottling Co. (1949) 70 Pa. D. & C. 145, 65 Montg. Co. L. R. 117. Containers, see, Noonan v. Great A & P Tea Co. (1927) 5 N. J. Misc. 201, 135 A 822. Drugs, see, Tombari v. Connors (1912) 85 Conn. 231, 82 A. 640; Dunlap v. Oak Cliff Pharmacy Co. (1926) 288 S. W. 236; Edelstein v. Cook (1923) 108

Ohio ST 346, 140 N. E. 765. Household Furnishings and Equipment, see, Jamieson v. Woodward & Lothrop (1957) 101 App. D. C. 32, 247 F. 2nd 23. Clearly, the products liability field has progressed and grown by leaps and bounds and rightfully so. This Honorable Court has explored this area extensively on previous occasions, and more singularly in Jamieson v. Woodward & Lothrop, supra. 3/

Today, the general rule maintains that there can be no recovery in the absence of privity and the injured consumers seeking damages from manufacturers must show that their action falls within a judicially recognized exception to the general rule. Normally, these exceptions, as was pointed out elsewhere in this brief, deal with foods and beverages or products which usually, but not always, might be called inherently dangerous. The Uniform Commercial Code has clarified the privity requirement in action by non buyers against retailers. The Code extends warranties to members of the buyer's family, his household and guest.4/ Title 2 of the Uniform Commercial Code, now represents the law of Warranty in the

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3/ Citing Dillard & Hart, Product Liability, Directions for Use and Duty to Warn; 41 Va. L. Rev. 145 (1955); James, Products Liability, 34 Texas L. Rev. 44, 192 (1955); Wilson Products Liability, 43 Calif. L. Rev. 614, 809 (1955); Miller, Manufacturers' Product Liability, 24 N. Y.S. B. A. Bull, 313 (1952); Clark, Let the Maker Beware, 19 St. John's L. Rev. 85 (1945); Restatement, Torts #388 - 402 (1934).

4/ Uniform Commercial Code, Title 2.

District of Columbia as was pointed out hereinbefore.[5]/

Much discussion has been made concerning liability of manufacturers but little comment has been thrusted at the Retailer. Should the Retailer escape the fangs of the sweeping law of product liability? Certainly, no justifiable reason can be given for allowing the retailer to escape his just debts and obligations to the purchasing society. The general rule is that a retailer or a Vendor of a product, manufactured by a reputable third person, who neither knows nor has reason to know that it is likely to be dangerous is not subject to liability for harm caused by the product even though he could have discovered the injury-causing defect by inspection or test before selling it. The exception to the rule makes the used car dealer liable. The reason for the rule is that a used car dealer has special knowledge and because of the general character of their business frequently requires pre-inspections, testing and repair of both new and used cars. This is not to say that the duty to inspect and test is so extensive as to require discovery of latent defects. This Court should take notice, as a matter of common knowledge that defects that were clearly obvious in the Hunter-Center Motors Sales transaction cannot be

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5/ All states have adopted the Uniform Commercial Code except Arizona, Idaho and Louisiana.

be classified as latent in character.[6] Thus, in Jones v. Raney Chevrolet (1940), 9 S. E. 2nd 395, an action where plaintiff sued to recover for injuries received due to an accident caused by defective brakes on the car in which he was riding and which had been sold to the driver of the automobile by the defendant, used car dealer, who represented that the automobile was equipped with good reliable brakes, and the Trial Court having entered a non-suit against the plaintiff. On appeal, the decision was reversed. The North Carolina Supreme Court held that:

> "A used car dealer who repairs and reconditions for resale owes a duty to the public to use reasonable care in the making of tests and necessary repairs to detect and make reasonably safe defects which would render the vehicle a menace and is charged with knowledge of defects readily discoverable in the exercise of ordinary care."

In another case, a judgment was affirmed for plaintiffs, who were guests in a used automobile sold to the driver. The plaintiffs had been injured in a second-hand car conditionally sold to the driver by the defendant used car dealer. It was shown that the car was equipped

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6/ Defects found in the Hunter car at the time of initial auto inspection revealed the following: steering alignment defective, auxiliary brakes defective, brake equilization defective, directional signal defective, rear lights defective, steering operation defective, including King pins, ball joints, worm and sector, tie rod ends, drag link, control arms, shock absorbers, springs and shackles, axles, wheel bearings, realignment, etc.

with faulty brakes and that the defendant had not made a reasonable inspection for defects prior to placing the car in the driver's possession. The California Court said in affirming judgment for plaintiffs:

> "Although the driver was also negligent in operation, defendant's negligence could also be said to be a substantial factor in bringing about the injuries since the likelihood of negligent operation was reasonable, forseeable, and the duty to inspect extended to third persons as well. See Benton v. Sloss (Cal. S. Ct. 1952) 240 P. 2nd 575.

But, what about a situation where the used car dealer knows or has reason to know that the used - vehicle, a dangerous instrumentality, is placed in the hands of the purchaser even after inspection by local authorities as was the fact in Hunter's case? It would appear as though stronger reasons are presented which would hold the defendant used-car dealer liable.

In Hembree v. Southard, (Okla. S. Ct. 1959) 339 P. 2nd 771, plaintiff was injured when the brakes on the right front wheel on the car locked, causing the car to overturn. Plaintiff sought damages from the used car dealer. The defendant used car dealer had made no tests or repairs on the automobile after it had been traded to him on another car. The Oklahoma Supreme Court held that jury was justified in returning a verdict for the plaintiff where there was evidence that defendant had failed to exercise reasonable and ordinary care required of

him as a used car dealer in checking the car for defects dangerous to prospective buyers.

As to the duty owed to third persons by the seller of used cars, the Oregon Courts have propounded a rule that: An automobile dealer must use reasonable care to see that a car placed in the hands of a prospective buyer is in reasonably safe condition. Failure to comply with this duty extends liability to third persons if injury is the proximate result of such negligence. See Bogart v. Cohen-Anderson Motor Co., Inc. (Ore. S. Ct. 1940) 6 Automobile Cases 425, 98 P. 2nd 720.

Attention has also been focused on cases dealing with defective steering mechanisms in used cars. In one case, the plaintiff was injured when a reconditioned truck sold by the defendant dealer to defendant driver suddenly veered off the road and into plaintiff's car. The Circuit Court of Appeals for the Eighth Circuit held, that a dealer in reconditioned cars owes a duty to use reasonable care in testing and inspection and is charged with knowledge of those defects discoverable in the exercise of ordinary care. The evidence showed that the collision was due to a defective steering mechanism which could have been discovered had reasonable care been used in inspection. Egan Chevrolet Co. v. Bruner (CA - 8th,

1939 , 105 F. 2nd 373).

The rule in this jurisdiction, the District of Columbia, has been and still is that a used car dealer is not an insurer of the safety of autos sold by him. But, the exception to that rule should be--a used car dealer is under a duty to exercise reasonable care to detect defects and correct them. Warning the prospective buyer of these defects should not absolve the used car dealer from liability.

The question might arise as to the length and duration of the liability of the used car dealer. Appellant does not contend here that the dealer's liability should extend throughout the life of the used car. What appellant does contend is that where the dangerous instrumentality is known, in fact, to consist of numerous defects, and the dealer makes no attempts to correct those defects or either in making such corrections, he does so negligently, then his liability continues and attaches to the dangerous instrumentality up to the time of correction of those defects or, unfortunately, until a serious accident occurs which either causes serious bodily injury or death. It must be remembered that in Hunter's case the dealer sold an inherently dangerous and grossly defective vehicle.7/ The car was taken back to the defendant

7/ See note (4) infra.

for corrections, and if they (corrections) were made, they were made negligently. There is further evidence that Hunter took the car back to Center Motors and told them that he no longer wanted the car (because of its condition) and Hunter refused to continue to pay the notes on the car.8/ Hunter was therafter sued on the note in an action entitled: MASTER CREDIT SERVICE, INC., Assignee of CENTER MOTORS, INC. vs. HECTOR HUNTER, Civil Action Number C 19920-64 and a judgment was obtained against him and his wages attached. Hunter was thereafter compelled to return to Center Motors, Inc. and obtain possession of the automobile inasmuch as he was legally required to pay for it. Hunter resumed possession of the car on January 5, 1965.9/ On March 22, 1965, (approximately 75 days after Hunter resumed possession) while Hunter was operating the automobile in a careful and prudent manner he lost control of the steering due to a locking of the steering.10/

8/ The decedent, not being well lettered in business transactions certainly could not be charged with knowledge of the Third-Party Trust Receipt method of financing used in the District of Columbia.

9/ While the auto was again in the exclusive possession of the defendants, Center Motors, Inc., the latter had additional opportunity to correct the defects if it had wanted to show good faith--but Center Motors, Inc., failed to do so. For the second time, the defendant released the grossly defective automobile to Hunter.

10/ Testimony of Elmer Armstrong at his Deposition reveals "Res Gestae" statements made by Hunter to Armstrong immediately before the car left the highway.

Can it not be said that Center Motors, Inc., has incurred no liability as a result of this accident? Certainly, Center Motors owed a higher duty of care to make a reasonable inspection and mechanical correction for defects and cure of those defects. In failing to do so, as Center Motors surely failed, Center Motors should be held liable. Hunter's case does not represent the average personal injury case. Here, five human lives were snuffed out and six persons permanently injured. Who must the financial burden fall upon, the consumer or retailer? Must the consumer pay twice--the first payment in cash for purchase of the defective dangerous instrumentality and the second payment-with his life? Used car dealers, like manufacturers of new cars owe the same duty of car to the ultimate consumer and foreseeable third persons even though not in privity with them. Appellant urges this Honorable Court to extend application of the doctrine against manufacturers of automobiles to Used Car Dealers as well. In one clean sweeping decision, this Honorable Court can overrule the large body of warranty law in the District of Columbia as was done in Greenman v. Yuba Power Products, Inc. (1963) 59 Cal. 2nd 57, 377 P. 2nd 897, by the California Courts. In Greenman v. Yuba Power Products, Inc., supra, plaintiff,

who was injured while using a power tool given him by his wife as a Christmas gift, sued the retailer and manufacturer, alleging negligence and breaches of implied and express warranties. The California Court held that:

> "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."

The same rule enunciated in Greenman, supra, should be adopted in this jurisdiction to cover manufacturers as well as retailers of new and used automobiles. To cut the extension of the doctrine short which would obviate coverage of used car dealers would rupture the sacred theory underlying the rule that the purpose of such liability is to insure that the costs of injury resulting from defective products are borne by the manufacturers (OR RETAILERS) that put such products on the market rather than by the injured persons who are powerless to protect themselves. See Prosser, Strict Liability to the Consumer, 69 Yale L. J. 1099, 1124-1134.

Conflict of Laws -- Potential Application of the Rule of Strict Tort Liability Projected.

The place of the injuries and deaths at bar occurred in the Commonwealth of Virginia. Accordingly, in consideration of any projected application of the rule of Strict Tort Liability, this Honorable Court must look to the

laws of Virginia under the maxim lex loci delicti.

Concededly, the State of Virginia still maintains the Warranty Theory of Liability. However, exceptions to the warranty theory of liability have been codified thereby abolishing the privity requirement for all foreseeable plaintiffs. Va. Code Ann. #8-654.3 (Supp. 1962). Under the provisions of the Virginia Code, that state Legislature has enacted into law, the rule that,

> "Lack of privity between the plaintiff and defendant shall be no defense in any action against the manufacturer or seller of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the manufacturer or seller might reasonably have expected to use, consume, or be affected by the goods! . . . . . "

However, Appellants state the position to be--the laws of the District of Columbia should apply inasmuch as the legal duties arose out of a transaction contractual in nature which, as Appellants contend, furnished the initial basis for ex delicti liability. Thus, under the doctrine of Renvoi, this Honorable Court should look to the whole law of Virginia, including its' Conflict of Laws Rules, and the question as to what the law of the forum would be, finally rests with the internal

laws of the District of Columbia. Authority for this position is supported by the United States Supreme Court in Richards v. United States ( ) 369 U.S. 1, 82 S. Ct. 585 where that august body interpreted the provisions of the Federal Tort Claims Act as they apply to the governments liability, was determined by the law of the place where the act or ommission occurred means the whole law of such place and not merely the internal law.

While the Restatement, Conflict of Law #7 (b) seems to reject the Renvoi doctrine, Appellants nevertheless urges this Honorable Court to follow the Federal Rule as enunciated in Richards v. United States. See: 59 Columbia L. Rev. 440, Cormack, "Renvoi, Characterization, Localization, and Preliminary Question in Conflict of Laws"; 14 S. Cal. L. Rev. 221; Lorenzen, "The Qualification, Classification or Characterization Problem in the Conflict of Laws;" 50 Yale L. J. 743; Cook, the Logical and Legal Bases of the Conflict of Laws, Vol. 5 Harvard Studies in the Conflict of Laws, Ch. IX pp. 239 et seq.

Seemingly, no violent injustice would be served under either the District of Columbia laws or the Virginia laws if new legal innovations are established now. The

weight of ultimate "pure justice" would certainly furnish a stronger basis for applying the suggested theories under both laws.

SHOULD THE DOCTRINE OF STRICT TORT LIABILITY APPLY IN WRONGFUL DEATH ACTIONS?

Assuming that under the doctrine of Renvoi; the whole law of the Commonwealth of Virginia would, under conflict of laws, refer back to the laws of the District of Columbia, consideration must be given to the District of Columbia Wrongful Death Statute. Under Title 16, D. C. Code 1201, 1961 edit., Congress has declared that:

> "Whenever by an injury or happening within the limits of the District of Columbia and the death of a person shall be caused by the wrongful act, neglect or default, of any person or corporation, and the act, neglect, or default is such as would, if death has not ensued, have entitled the party injured, or if the person injured by a married woman, have entitled her husband, either separately or by joining with the wife, to maintain an action to recover damages, the person who or corporation which would have been liable if death had not ensued shall be liable to an action for damages for such death . . . ."

Appellants are well aware of this Courts previous holding that the District of Columbia Wrongful Death Statute, and the limitations thereof are confined to injuries suffered within the District of Columbia.

Lewis v. Reconstruction Finance Corp., (1949) 85 U. S. App. D. C. 339, 177 F. 2nd 654.11/ Lewis, supra, can become the subject of close scrutiny here under Appellants argument as to affirmative application of the Renvoi Doctrine and conflicting concepts of District of Columbia public policy as we shall see. But, in examining the Wrongful Death Statute of the Commonwealth of Virginia we find both statutes similar. However, the Virginia Wrongful Death Statute, it is provided that:

> "Whenever the death of a person shall be caused by the wrongful act, neglect, or any default of any person or corporation, or any ship or vessel, and the act, neglect or default is such as would if death had not ensued, have entitled the party injured to maintain an action, or to proceed in rein against such ship or vessel. . . .shall be liable to an action for damages. . . . not withstanding the death of the person injured and although the death shall have been caused under circumstances, as amount in law of a felony."
> Vol. 2, Title 8, Code of Virginia, Sect. 633, Article 3, 1957 edit.12/

While the case law is relatively slim on the issue of whether strict liability doctrine should be applicable to Wrongful Death Actions, there is no real reason to conclude that the doctrine is not included within the

11/ Appellant does not cite Lewis v. Reconstruction Finance Corp., supra, for its holding applicable to the Statute of Limitation as that question is not raised in Appellants brief.

12/ Statute of Limitations under Virginia Code is 2 years, as amended 1958. Vol. 2, Virginia Code, 8-633, 1966 Supplement.

Death Statute of either the District of Columbia or Virginia. Compare, Sullivan V. Dunham, 1900, 161 N. Y. 290, 55 N. E. 923; United N. Y. & N. J. Sandy Hook Pilots Ass'n v. Halecki, 1959, 358 U. S. 613, 79 S. Ct. 517: United States v. Praylov, 4th Cir. 1953, 208 F. 2nd 291. Courts have gone so far as to hold that, regardless of the form of the action, the tort aspect of warranty calls for the application of a tort rather than a contract rule and the doctrine of Strict Tort Liability is included under Wrongful Death Statutes. Greenwood v. John R. Thompson, Co., 1919, 213 Ill. App. 371; Parks v. C. C. Yost Pie Co., 1914, 93 Kansas 334, 144 P. 202; B. F. Goodrich Co., v. Hammond, 10th Cir. 1959, 269 F. 2nd 501; Hinton v. Republic Aviation Corp., So. Dist. N. Y. 1959, 180 F. Supp. 31; Ewing v. Lockheed Aircraft Corp., D. Minn. 1962, 202 F. Supp. 216. While Wrongful Death arising out of a contract, concededly have no application to Death Actions. The fact that there was a contractual relationship between decedent and defendant does not prevent the action from sounding in Tort. As was the fact in Hunter's case. Braun v. Riel, 1931, 40 S. W. 2nd 621; Thaggard v. Vafes (1928) 218 Ala. 609, 119 So. 647; Oklahoma Natural Gas v. Young, 10th Cir. 1940, 116 F. 2nd, 720, 723. The mere fact that the allegations in the pleading smacks of actions ex contractu, does not render

the real fact that ex contractu allegations in the pleadings are made by way of inducement, but the gravamen of the action sounds in Tort. Mueller v. Winston Bros. Co. (1931) 165 Wash. 130, 4 P. 2nd 854; Cabe v. Ligon, (1921), 115, S. C. 376, 105 S. E. 739.

Appellant contends that no matter what the cause of action may be in Tort or in Contract, the damage suffered by the plaintiffs is equally as great in both and it should make no difference whether the action sounds in one or the other. See 38 Virginia L. Rev. 676.

In 1907, the Court of Appeals for the District of Columbia seemed to have encompassed both issues as to Choice of Law and application of liability in Wrongful Death Causes. In Moore v. Powell (1907) 29 App. D. C. 312, 9 L. R. A. N. A. 1078, an action was brought in the District of Columbia to recover damages for death of the plaintiff's intestate in Maryland, caused by the alleged negligence of the defendant, who, at his drugstore in the District of Columbia, improperly filled a prescription for the intestate. At the conclusion of the plaintiff's evidence, the defendant moved for a directed verdict in his favor on the ground that the evidence did not tend to show "an injury done and happening within the limits of the District of Columbia," as alleged in the declaration, but in Maryland and that under the declaration the plaintiff's cause of action, if he had one, was

not given by the District of Columbia Wrongful Death Statute but by the Maryland Statute. The Court directed a verdict in favor of the defendant. On Appeal, the Court held, in reversing the judgment that "the place of the death ought not to determine the existence or non-existence of a course of action." However, as both the Maryland and District of Columbia Statutes allowed an action for wrongful death, and the Court held that, upon remand, the Trial Court should take judicial notice of both statutes, it seems that a ruling on the choice of law question was not necessary. The case of Jamieson v. Woodward & Lothrop, decided 1957, supra, and Atwell v. Pepsi Cola Bottling Co. (1959), 152 A. 2nd 196, do not diminish the scope and effect of Moore v. Powell, supra, for the stated reason that the Court's holdings in Jamieson, supra and Atwell, supra, were applicable to choice of law questions in personal injury cases and not in Wrongful Death cases, remembering, of course, that the Courts' held that where injuries occurred in Virginia and Maryland, Virginia and Maryland Law governed each case respectively, for the foregoing reasons advanced by Appellants, the doubts raised as to whether or not the doctrine of Strict Tort Liability should apply to Wrongful Death Actions should be resolved in the affirmative.

THE DOCTRINE OF STRICT TORT LIABILITY SHOULD ATTAIN IN THE DISTRICT OF COLUMBIA.

Today, Appellants strongly urge this Honorable Court to review the status of the law of warranty in the District of Columbia in order to ascertain whether the warranty laws reliably resolve the human misery, tragedy and suffering resulting from complete disdain for the protection of the purchasing public by retailers who sell their wares in the District of Columbia. More particularly, attention should be focused on the practices by used car dealers who pass on to the public, defective automobiles with reckless abandon and who, since time immaterial, hide behind the protection of the magic phrase "50-50 guarantee" or so - many miles, whichever comes first."

In a general survey released by the National Safety Council, its findings were grim and shocking when it is learned that during the year 1966 Motor Vehicle Accidents on a national scale cost $10,000,000,000[13/]. As a leading cause of death, motor vehicle accidents rank as follows according to age grouping: (Under Accidents) per 100,000 population: for all ages, 4th leading cause of death;

13/ See Accident Facts, 1967 edit., page 5, by National Safety Council.

under 1 year, 8th leading cause of death; 1 to 4 years, 3rd leading cause of death; 5 to 14 years, 1st leading cause of death; 15 to 24 years, 1st leading cause of death; 25 to 44 years, 1st leading cause of death; 45 to 64 years, 4th leading cause of death; 65 to 74 years, 6th leading cause of death; and 75 years and over, 7th leading cause of death.14/ Accidents are the leading cause of death among all persons age 1 to 37 and among persons of all ages, accidents are the fourth leading cause of death. During the years 1965 and 1966, 94 deaths were recorded in the District of Columbia. In 1966, Motor Vehicles accounted for 210 deaths in the District of Columbia. The foregoing do not adequately pin-point the causes of automobile collisions nor do they raise an eyelid when compared with Appellants arguments here. Thus, a review of statistical findings as to how people died in Motor Vehicle Accidents in 1966 must be made. In 1966, 300 persons died in collision accidents on the roadway caused by either over turning or running off the road. The above figure represents a 9% increase when compared with the number of deaths recorded in 1965 under this specific heading.15/

13/ See Accident Facts, 1967 edit., page 5, by National Safety Council.

14/ See Accident Facts, page 8, infra.

15/ See Accident Facts, page 42, infra.

Under the National Vehicle Safety-Check Program in 1966 the following defects were found in automobiles being operated in the United States:

Item Checked	Passenger Cars No. of Items Defective	% of All Items
Front Lights	57,155	15.7
Brakes	51,479	14.2
Rear Lights	44,487	12.2
Stop Lights	32,160	8.8
Front Turn Signals	32,528	8.9
Windshield Wipers	26,887	7.4
Rear Turn Signals	25,626	7.0
Tires	26,389	7.3
Exhaust System	25,240	6.9
Steering	18,478	5.1

16/

Clearly then, there is a strong degree of correlation between the defective automobile and the automobile accidents. However, statistics, taken alone, do not say much, other than the fact that they represent jumbled numerical classifications. Be that as it may, the degree and increase of onslaughts on the highway motivated great national concern. The Federal Government has recognized the need for Legislation in this area in order to protect the consumer. Correctly reviewed, the Congress (Legislature) and the Executive Branches of Government have acted to resolve

16/ Reproduces from Chart, page 57, Accident Facts, infra.

the problem of safety to the consumer. Evidence of this concern was demonstrated during the Hearings before the Committee on Commerce, United States Senate on March 16, 17, 29, 30 and April 4, 5, 6, 1966 -- during which time, hearings were held on Senate Bill 3005. The purpose of the Bill was to provide for a coordinated National Safety program and Establishment of Safety Standards for Motor Vehicles in Interstate Commerce to Reduce Traffic Accidents and the deaths, injuries and property damage resulting from such accidents.17/ This bill was subsequently enacted as a law now known as the Highway Safety Act of 1966. Notably, public action had not been taken in safety prevention area until 1966, approximately one year after Ralph Nader, Esquire, presented to the public his Treatise, "Unsafe At Any Speed," by Nader, Appellant refers this Court to a very critical and crucial line in the Treatise. Nader states:

> "Judicial decisions throughout the 50 states have given living meaning to Walt Whitmore's dictum, 'If anything is sacred, the human body is sacred! Mr. Justice Jackson in 1953 defined the duty of the manufacturers by saying, 'where experiment or research is necessary to determine the presence or the degree of danger, the product must not be tried out on the public, nor must the public be expected to possess the facilities or the technical knowledge to

17/ See Transcript of Hearings on Senate Bill 3005, Serial No. 89-49, Hearings Before the Committee on Commerce, United States Senate, 89th Congress, U. S. Government Printing Office, 1966.

> learn for itself of inherent but latent dangers. The claim that a hazard was not foreseen is not available to one who did not use foresight appropriate to his enterprise'". 18/

While admittedly, Nader's work as well as the Motor Vehicle and Highway Safety Acts of 1966 are directed towards manufacturers there is no sound reason nor logic as to why the principles and arguments advanced enunciated are not applicable to the retailer as well. After all, it is the retailer who has direct contact with the public consumer. To be sure, the purchaser of a new automobile enjoys some degree of protection but what about the purchaser of a used automobile? Is he not entitled to protection from injuries? Is his life of less value because the commodity which he purchased was used? Does a $1,000.00 difference in his purchase make the difference whether he is entitled to good sound wares? Is there any sound reason why the doctrine of Caveat Emptor cannot be buried forever? Appellants urge this Honorable Court to take a long look at those questions posed for its consideration.

18/ Page X, preface, Unsafe At Any Speed, by Nader. See also, Transcript of Hearing Before Committee on Commerce, United States Senate, (Traffic Safety), Senate Bill 3005, Serial No. 89-49, March 16, 17, 29, 30 and April 4, 5, 6, 1966. Motor Vehicles and Highway Safety Acts of 1966.

Appellants strongly contend here that members of the purchasing public, who purchase used motor vehicles, or any other instrument which is potentially dangerous to life and limb, should receive the protection of the Courts. The legal vehicle which can be used to afford that protection is by adoption of the Strict Tort Liability Doctrine. Earths will not shake, nor will mountains tremble at the introduction of the Strict Tort Liability Doctrine. Assuming that Virginia law is controlling no repugnancy to Virginia law will avail for it is now settled in Commonwealth that the rule of non-privity has been adopted. Pierce v. Ford Motor Co. (4th Cir.) 1951 190 F. 2nd 910. The non-privity rule has many of the attributes of the Strict Tort Liability Doctrine. The latter doctrine in itself is not unknown to the Commonwealth, for the doctrine has been applied in food cases there. Swift & Co. v. Wells, (1959), 110 S. E. 2nd 203.

Aside from the Virginia view, a national survey of the application of the Strict Tort Liability Doctrine should lend some support to Appellant's contentions. First of all, a clear recital of the rule which Appellants advance should be set forth here. The best

definition and explanation of the rule is found in the Restatement of the Law of Torts, Second.

"402 A. . . . . .

1. One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the conditions in which it was sold."

Correctly viewed, Courts adopt two theories to achieve Strict Liability, i. e., Warranty and Tort. However, Appellant urges adaptation of Strict Tort Liability here. The states now adopting the Strict Tort Liability Doctrine are: California, Connecticut, Illinois, Indiana, Kentucky, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio,Oregon, Pennsylvania, Tennessee, and Texas. The District of Columbia still clings to the Warranty Theory even though the rule of non-privity has been used here. A Lower Court of Appeals in the District of Columbia held that lack of privity of contract was not a bar to a purchaser's action against the manufacturer to recover for breach of implied warranty of fitness

for property damages to a three-month old automobile which left the road allegedly due to a defective steering-mechanism. Picken X-Ray Corp. v. General Motors, (1962) 185 A. 2nd 919.

Retailers of new and used automobiles should not escape the grips of the Strict Tort Liability Doctrine, merely because of "deeper pocket theories" or "creator of dangerous image theories." While the basic rule is that a retailer or a vendor of a product, manufactured by a reputable third person, who neither knows nor has reason to know that it is likely to be dangerous is not subject to liability for harm caused by the product, even though he could have discovered the injury-causing defect by inspection or test before selling it. The rule is not without exception. The exception to the rule is: a seller may be subject to liability if, although ignorant of the dangerous condition of the product, he could have discovered it by exercising any particular opportunity or competence which as a seller in such products he has or should have. The exception to the rule was designed specifically to preclude retailers or used car dealers, as appellee from escaping the grips of liability. Used car dealers fit perfectly within the exception to the general rule because of their special knowledge and because of their business which requires

preinspection, testing and repair of both new and used automobiles and used car dealers have been liable on numerous occasions because of their failure to inspect or test to find defects which would have been discoverable by the exercise of ordinary care. Stronger reasons for application of the exception are, clearly present in cases, as was the Hunter case, where the seller knew of the numerous defects in the automobile, had several opportunities to correct those defects, but willfully and wantonly ignored its primary obligations and duty to the public, that is the duty to inspect, correct and place safe products on the public highways of the District of Columbia as well as products which find their way into the stream of inter-state commerce.

Admittedly, the law of product liability has undergone dramatic changes since its inception. Appellants are among the first to admit difficulty in comprehending the numerous terms in the product liability field. History of evolution of the law in this area must be resorted to in order to place Appellants cause and contentions in proper perspective. Thus, we see that in Winterbottom v. Wright, supra, where the defendant had made a contract with the postmaster general to provide and to keep in repair a mail-coach, and the coach broke down, overturned and injured the plaintiff-coachman, the employee of persons who had contracted to horse and man

the coach, the English Court held that plaintiff had no course of action against the defendant for the reason that there was no privity of Contract between the parties. The next case of substantial impression in this area and presumably a case of first impression in the United States was the case of Thomas & Wife v. Winchester, supra. In Winchester, supra., an action was brought by the plaintiff and his wife against the defendants to recover damages for negligently putting up, labelling and selling, as an extract of dandelion, a simple and harmless medicine, a jar of extract of belladonna, a deadly poison, whereby the femail plaintiff had been greatly injured after using the same. The Court, in taking a step further from Winterbottom, supra, held that, a dealer in drugs and medicines, who carelessly labels a deadly poison as a harmless medicine, and sends it so labelled, into the market, is liable to any person, who, without fault on his part, is injured thereby, though it may have passed through other hands, by intermediate sales, before it reached the person injured.

In 1903, the U. S. Circuit Court of Appeals for the Eighth Circuit, decided, Huset v. J. I. Case Threshing Machine Co., 120 Fed. Rep. 865. In Huset, supra, J. H. Pifer had purchased the threshing machine from the defendant. While an employee of Pifer was assisting

in the operation of the machine, and while walking upon the covering of the machine, the covering sank and plaintiff--employee's leg was crushed above the knee and plaintiff's leg had to be amputated. Plaintiff-employee brought suit against the manufacturer. On Trial defendant was granted a demurrer to the plaintiff's complaint. On appeal by the plaintiff, the Court, reversing, held that, as an exception to the general rule relating to privity of contract, a manufacturer or vendor, who without giving notice of the character and qualities of articles, known to be imminently dangerous to the life or limbs of anyone who may use it for the purpose for which it is intended, is liable to anyone who sustains injury from its dangerous condition, whether he has contractual relations with him or not.

In MacPherson v. Buick Motor Co., supra, defendant, a manufacturer of automobiles, had sold an automobile to a retailer-dealer. The retailer-dealer sold the automobile to the plaintiff. While the plaintiff was in the car, it suddenly collapsed and plaintiff was injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments. The wheel was not made by the defendant. Plaintiff filed suit for damages, alleging negligence. The issue in the case was whether

the defendant owed a duty of care and vigilance to anyone but the immediate purchaser. The Court held the Appeal the celebrated Justice Benjamin Cardozo writing the lending opinion, that although the automobile manufacturer had actually obtained the wheel from another manufacturer, the manufacturer of the finished product had a duty to make an inspection of the wheel. Thus, MacPherson v. Buick Motor Co., supra, began the trend which was to lead to the abandonment of the rule requiring privity of contract in negligence actions. In 1944, the California Supreme Court decided Escola v. Coca Cola Bottling Co. of Fresno, 24 Cal. 2nd 453, 150 P. 2d 436. In Escola, supra, plaintiff, a waitress in a restaurant was injured when a bottle of Coca-Cola broke in her hand. The jury returned a verdict for plaintiff and the defendants appealed. On appeal, plaintiff contended that the Doctrine of Res Ipsa Loquitur was applicable on the theory that the defendant had control of the dangerous instrument or product at the time of the negligent act.19/ The Court held that the manufacturer was liable to the plaintiff, not withstanding the fact that there was no privity of contract between the parties.

19/ There is no reason why the Doctrine of Res Ipsa Loquitur cannot be applied in Hunter's case inasmuch as evidence showed that the automobile was under the control of the defendant at the time of the negligence during the sale of the car.

One of the more contemporary cases of substantial impression is Henningsen, et al. vs. Bloomfield Motors, Inc., et al, (1960), 3 N. J. 358, 161 A. 2d 69. In Henningsen, supra, plaintiff's husband purchased a new automobile as a Mother's Day gift. Less than two weeks after purchase and while driving the automobile at a moderate rate of speed, the car veered suddenly from the road, because of an alleged defect in the steering mechanism and plaintiff was injured when the car ran into a wall. The Court held that, under modern marketing conditions, when a manufacturer puts a new car into the stream of trade and promoted its purchase by the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser. Justice Foanas, in writing the majority opinion for the New Jersey Court, eluded to language enunciated by Justice Cardozo in the landmark case of MacPherson v. Buick Motor Co., supra,

> "Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. . . . . The dealer was indeed the one person of whom it might be said with some approach to certainty that by him the car would not be used. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be."

In Greenman v. Yuba Power Products, Inc., supra, the plaintiff brought an action against the retailer and manufacturers of a Shopsmith. While using the Shopsmith (a combination power tool that could be used as a saw, drill and wood lathe) a piece flew out of the machine and struck him in the forehead, inflicting serious injuries. The jury was allowed to rule on the question as to liability of the manufacturer but not the retailer. The jury found for the plaintiff against the manufacturer and both the manufacturer and plaintiff appealed. The California Supreme Court held that a manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being. Greenman, supra, represents the first case in California when the Strict Tort Liability Doctrine has been clearly enunciated. Like California, the District of Columbia, as the law stands today, does not demand that there be privity. Clearly then, the question of privity is not decisive in cases involving dangerous instruments and the use thereof. The trend has already been set for the move towards application of Strict Tort Liability. The reason being, as Justice Traynor pointed out in Greenman, supra,

> ". . . . . the abandonment of the requirement of a contract between the parties makes it clear that the liability is not governed by the law of Contract Warranties but by the law of Strict Liability in Tort!"

What Appellants are asking here is to apply the doctrine of Strict Tort Liability to sellers or retailers of new and used instruments which are inherently dangerous to life and limb. The critical conflict of laws question does not and would not alter the results inasmuch as the District of Columbia and Virginia have both dispersed with the privity requirement. Virginia has even taken steps to dispense with the privity requirement by legislation. Va. Code Ann. Ch. 29, #8-654.3 (Supp. 1962).[20/] As a matter of fact, the question need not be decided at all. The Illinois Court did so in Haley v. Merit Chevrolet (1966) 214 N. E. 2d 347. In Haley, supra, one of the plaintiff's had purchased an automobile in Illinois and while driving the automobile in Iowa, was involved in an accident in the latter state, when the steering wheel of the car came loose from its attachments at the dashboard. Without deciding whether Illinois or Iowa law applied, the Appeals Court ruled that the outcome of the case would be identical under either Illinois or Iowa law as both states had dispensed with the requirement of privity of Contract.

20/ Virginia has, in reality, adopted the rule of non-privity. Pierce's vs. Ford Motor Co., supra.

The fact that Appellees are retailers of used automobiles should not absolve them from application of the Strict Tort Liability Doctrine or from clear liability under the doctrine. Appellants have stated the rule hereinbefore, that a seller may be the subject of liability if, although ignorant of the dangerous condition of the product, he could have discovered it by exercising any particular opportunity or competence which as a seller in such products he has or should have. This rule extends to sellers in such products he has or should have. The application of the rule to used car dealers is not new to the judicial circuits. In an action to recover damages due to an accident caused by defective brakes on a used car which was sold by the defendant. On Appeal from a judgment of non suit against the plaintiffs, the North Carolina Supreme Court held that a used car dealer who repairs and reconditions for resale owes a duty to the public to use reasonable care in making of tests and necessary repairs to detect and make reasonably safe defects which would render the vehicle a menace and is charged with knowledge of defects readily discoverable in the exercise of ordinary care. Jones v. Raney Chevrolet Co., supra. There is some contention by Appellees that Appellant, Hunter, might have been negligent in the operation of the car at the time of the accident. Of course, this contention should not

be given any wieght in the case at bar. There are stronger reasons why Appellee should be held liable, notwithstanding any defenses which it might raise. In Benton v. Sloss, supra, judgment for the plaintiffs, guests who were injured in a second-hand car conditionally sold to the driver by defendant used car dealer, was affirmed when it was shown that the car was equipped with faulty brakes and that the defendant had not made a reasonable inspection for defects prior to placing the car in the driver's possession. The Supreme Court of California held that although the driver was also negligent in operation, defendant's negligence could also be said to be a substantial factor in bringing about the injuries since the likelihood of negligent operation was reasonably foreseeable, and the duty to inspect extended to protect third persons. The Oklahoma Supreme Court rendered the same holding in a similar case in Hembree v. Southard, supra. See also: Armour v. Haskins (Ky. Ct. App. 1955) 275 S. W. 2d 580; Bogart v. Cohen-Anderson Motor Co., Inc., supra; Al Dement Chevrolet Co. v. Wilson (Ala. S. Ct. 1949), 42 SO. 2d 585; Egan Chevrolet Co. v. Bruner, supra; Bock v. Truck & Tractor, Inc. (Wash. S. Ct. 1943), 139 P. 2d. 706.

Appellants acknowledge the principle that a used car dealer is not an insurer of safety of automobiles sold by him, but the rule cannot be controverted a dealer of used automobiles is under a general duty to exercise reasonable care to detect defects and correct them. Thrash v. U-Drive-It Co. (1953), 158 Ohio St. 465, 110 N. E. 2d 419. It has been declared, in other quarters, that a majority of the jurisdictions which have ruled on the subject of liability of used car dealers have held them liable for the reason that a used car dealer is in a better position by reason of opportunity to discover what defects might exist. Gaidry Motors, Inc. v. Brannon (Ky. Ct. App. 1953) 268 S. W. 2d 627; Barni v. Kutner (1950) 6 Terry 550, 76 A. 2d 801. Appellants case goes many miles further than the cases cited hereinbefore. Where the negligence of the dealer or seller is so flagrant, willful, wanton, reckless and in total disregard of human lives and where dealers are given several opportunities to correct the defects and fail to do so but rather, prosecutes a civil action against the uninformed purchaser, no defenses should be allowed nor heard. Puffing and fast sales talk can have an ultra-sensitive on most members of the purchasing public. These are the persons who need protection at the very beginning of a sales transaction.

The protection sought here, admittedly after the fact, would be extended and afforded if this Honorable Court

sees fit to fix liability on Appellees by use of the Doctrine of Strict Tort Liability.

Not only does the Used Car Dealer shirk from the public duty to place reasonably safe products (automobiles) on the market, they create, by their sales of defective used automobiles, and harbor absolute nuisances. See 21 NACCA Law Journal 430.

PUBLIC POLICY ARGUMENT:

Generally, it may be said that all of the Courts have now agreed that the Strict Tort Liability applies to manufacturers. There is general agreement among the Courts that the doctrine applies to Retailers or Sellers as well, excepting a small minority of states.

In addition, to the contentions advanced by Appellants elsewhere in their brief, the public policy of the District of Columbia must now demonstrate that the general purchasing public needs the protection of the Courts.

The public interest in human life and safety demands the maximum possible protection that the law can give against dangerous defects in products which they are helpless to protect themselves against. Surely, it is easy to say that no one forces the purchaser to buy and if he does buy, "let him beware!" As Appellants

have stated before and restate now, the rule of caveat emptor is dead and should not be resurrected here.

A supplier or seller of automobiles, new and used, by placing his wares in the common market-place, represents to the public that they are suitable and safe for use and by advertising or otherwise, he has done everything in his power to induce that belief. See: 69 Yale L. J. 1122, Strict Liability to the Consumer, by Prosser.

Appellants are urgently requesting this Honorable Court to avoid duplicity because of eventual wounds which the change might inflict. This Court could well absorb the shocks which, in its canded creativity, the change might dramatize.[21/] The balance between protection of the public and liability of the Seller or Retailer, by Strict Tort or absolute liability means, might well be struck by the new transition advanced here by Appellants.

The social responsibility of the retailer or seller imposes a higher duty of car upon him. The Strict Liability in Tort concept will therefore:

A. Provide an incentive to Sellers to be more selective in the purchase of automobiles which they handle for resale.

21/ R. Keeton, Creative Continuity in the Law of Torts, 75 Harv. L. Rev. 463, 506 (1962).

B. Shift the responsibility to the party most able to bear the last and to the party (Seller) most able to recognize and prevent or substantially correct the defect.

C. Spread the catastrophic losses suffered by a small percentage of users over a large area by a small increase in price.

As Fleming James, Jr., Professor of Law, Yale University, clearly summarized in Volume 24, Tennessee Law Review, p. 923:

> "Strict liability is to be preferred over a system based on fault wherever you have an enterprise or activity, beneficial to many, which takes a more or less inevitable toll of human life and limb. This is true at least where the accident victims are as a class economically ill-equipped to carry the burden of serious accident losses. The impact of such losses on the individual in terms of human hardship is often crushing and the repercussions of this blow reach far beyond the individual and pose a significant social problem."

The time is now ripe for an out and out assault upon the citadel of warranty liability.22/

CONCLUSION

Appellants have attempted to point out, to this Honorable Court, the numerous problems posed on this

22/ See Prosser, "The Assault Upon the Citadel," 69 Yale L. J. 1099 (1960).

appeal and by their discussion of these problems hereinbefore, must, of grave necessity, conclude that:

I. The Trial Court erred in directing a verdict for the defendants at the conclusion of plaintiffs' case.

II. That the cause now on Appeal before this Honorable Court should, for numerous reasons aforestated, be controlled by the Doctrine of Strict Tort Liability applied to sellers of used automobiles which are inherently, because of defects, dangerous to human life and limb.

III. Public policy dictates that the social responsibility imposed on Sellers of used products must be strictly adhered to.

Accordingly, Appellants pray this Honorable Court to reverse the Trial Court's Judgment.

Respectfully Submitted

s/Clement Theodore Cooper

Clement Theodore Cooper
Attorney for Appellants
918 F Street, N. W. (302)
Washington, D. C. 20004
EXecutive 3-3900

I N D E X

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

THOMAS S. HUNTER, 1
As Administrator of
Estate of HECTOR CHARLES
HUNTER, deceased
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 2
As Administrator of Estate
of HECTOR CHARLES HUNTER
and next friend of ANNIE
LAUREL HUNTER, deceased wife.
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 3
As next friend of JANICE ANN
HUNTER, deceased infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 4
As next friend of RAY HUNTER, an
infant
2925 Massachusetts Ave., S E.
Washington, D.C.

&

THOMAS S. HUNTER, 5
As next friend of ANTHONY HUNTER,
an infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

NELLIE MAE ARMSTRONG, 6
As Mother and next friend of
PEGGIE RUTH ARMSTRONG, minor,
Route 1, Box 285
Godwin, North Carolina

&

NELLIE MAE ARMSTRONG, 7
As Grandmother and next friend
of BERNARD ARMSTRONG, infant child,
deceased

(2)

Route 1, Box 285
Godwin, North Carolina

&

LILLIE MAE ARMSTRONG, 8
As Mother and next friend of
ELMER LEE ARMSTRONG
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 9
As Husband and next friend of
MARY LOUISE GILMORE, deceased
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 10
As Father and next friend of
LISA GILMORE, an infant
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 11
As Father and next friend of
LOUISE GILMORE
Route 1, Box 285
Godwin, North Carolina

Plaintiffs

VS.

CENTER MOTORS, INCORPORATED
a corporation
1332 Rhode Island Avenue, N.E.
Washington, D.C.

Defendant

CIVIL ACTION NO. 727-66

(3)

COMPLAINT FOR DAMAGES
WRONGFUL DEATH AND PERSONAL
INJURIES
NEGLIGENCE AND BREACH OF WARRANTY

COUNT I

1. On or about June 17, 1965, plaintiff 1 was duly appointed Administrator of the goods, chattels and credits of Hector Charles Hunter, deceased, by the Probate Court, United States District Court for the District of Columbia, Administration Number 114,230, and Plaintiff thereupon qualified as such administrator and is acting as such.

2. Jurisdiction is based on the amount in controversy which exceeds the sum of $10,000, exclusive of interest and costs and diversity of citizenship of the parties here involved. Plaintiffs 1 through 5 are adult residents of the District of Columbia and are citizens of the United States of America. Plaintiffs 6 through 11 are adult residents of the State of North Carolina and are citizens of the United States of America. The defendant is a corporation duly organized under the laws of the District of Columbia and is doing business therein.

3. At all times herein mentioned, Defendant was engaged in the business of buying and selling new and used automobiles at Number 1332 Rhode Island Avenue, N.E. in the District of Columbia.

4. On or about the 3rd day of February, 1964, plaintiff's intestate purchased from the defendant a certain 1958 Ford Fairlane 500, Hardtop, Used, Serial Number GSCV-129309, for general pleasure and business use for plaintiff's intestate and his family.

5. At the time the automobile was sold by defendant to plaintiff's intestate, the tramsmission and steering apparatus were not in good condition nor were they in serviceable condition, so that it was likely at any time during the normal usage of the automobile to cause the steering to lock

and gears to become jammed, and consequently the automobile to get out of control.

6. On or about March 22, 1963, while Plaintiff's intestate was operating his automobile in a reasonable and prudent manner, then and there being accompanied by Ten (10) other plaintiffs hereinafter mentioned, as a direct result of the negligence of the defendant in selling the same to Plaintiff's Intestate with a defective tr nsmission, defective steering apparatus and said automobile being in a generally overall defective condition, dangerous to life and limb, the gears became jammed and the steering apparatus locked suddenly causing plaintiff's intestate, without warning, to lose control of the automobile. By reason of the sudden loss of control of the automobile, while drinving North on Route #95 near Richmond, Virginia, and after Plaintiff's Intestate had completed passage of an autcmobile travelling in the same direction, plaintiff's intestate was unable to straighten said automobile by use of the steering and consequently cut suddenly across the North Bound Lanes of Route #95, across the wide shoulder, down a bank, and hit a tree head-on. As the automobile rolled over and down the embankment, plaintiff's intestate was crushed underneath it and was killed instantaneously.

7. The negligence of defendant, in addition to that hereinabove alleged, consisted of: (1) Failing to inspect the automobile before reselling it, to determine whether its transmission and steering were in proper working order; (2) failing to warn the plaintiff's intestate that the transmission and steering in said automobile were in defective condition, although defendant knew, or in the exercise of ordinary care, ought to have known, of the danger and grave hazard of the defective transmission and steering and of the general defective condition of said automobile; (3) lulling plaintiff's intestate into a false sense of security by representing to him that the automobile was in good operating condition, although defendant knew, or in the exercise of ordinary care ought to h ve known, that the automobile was in a dangerous

(5)

and hazardous condition to drive ; (4) placing on the market and selling to a purchaser, for use upon the public highways, an automobile containing inherently dangerous defects.

8. Plaintiff's Intestate was at all times, during the purchase of said auotmobile and operation thereof, acting in a reasonable and prudent manner and had, at all times, exercised reasonable care and was in no way contributorily negligent.

9. On or about February 3, 1964, Plaintiff's intestate purchased from the defendant a certain 1958 Ford Fairlane 500, Hardtop, Used, Serial Number GSGV-129309, for general pleasure and business use for Plaintiff's Intestate and for members of his family.

10. In selling said automobile to plaintiff's intestate, defendant orally and impliedly warranted that it was merchantable and reasonably fit and suitable for the purpose of its intended use.

11. Plaintiff's intestate relied upon defendant's oral and implied warranty in purchasing the said automobile.

12. At the time of the sale of the said automobile by the defendant to the plaintiff, the warranty was not true and the automobile was no merchantable and was not reasonably fit and suitable for its intended use, in that the transmission and steering and other parts were defective, in that during the course of reasonable use of automobile, the gears would jam or the steering would lock so that plaintiff's intestate would not be able to control said automobile.

13. On or about March 22, 1965, as a direct result of the breach of warranty by defendant, while plaintiff's intestate was driving said automobile in a reasonable and prudent manner, the gears on said automobile jammed and the steering locked so that plaintiff's intestate could not control said automobile and said automobile suddenly swerved off a public highway, down an embankment and collided into a huge tree thereby causing him to suffer death instantaneouly.

(6)

14. Plaintiff's intestate had, on numerous occasions immediately after the purchase of said automobile, gave due notice to the defendant of the grossly defective condition of the automobile, and of defendant's breach of warranty as herein alleged. Particularly, on one occasion, within a reasonable time after purchase of said automobile, and after plaintiff's intestate had given several notices to said defendant, plaintiff's intestate abandoned said automobile at the defendant's place of business and refused to continue paying for the same. That thereupon, defendant's assignee, filed a suit in D.C. Court of General Sessions for the balance due on said automobile and further garnished plaintiff's intestate's wages at his place of employment.

WHEREFORE, Plaintiff 1 prays judgment against the defendant in the sum of $200,000.

COUNT II

15. As a further proximate result of said negligence and breach of warranty by the defendant, plaintiff's automobile was totally destroyed. Said automobile was on March 22, 1965 of the reasonable market value of approximately $1,000.00.

WHEREFORE, Plaintiff 1 prays judgment against the defendant in the sum of $1,000.00.

COUNT III

16. Plaintiff 2 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14 of Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 2's intestate was a passenger in said automobile on the date of March 22, 1965.

17. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 2's intestate suffered instantaneous death.

WHEREFORE, Plaintiff 2 prays judgment against defendant in the sum of $150,000.00

(7)

COUNT IV

18. Plaintiff 3 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14 inclusively, of both Causes of Action under Count I of this Complaint, with like effect as if herein fully repeated and further alleges that Plaintiff 3's intestate suffered instantaneous death.

19. Plaintiff 3 was a passenger in the automobile in question on the date March 22, 1965.

WHEREFORE, Plaintiff 3 prays judgment against defendant in the sum of $100,000.00.

COUNT V.

20. Plaintiff 4 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of action under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 4's intestate was a passenger in said automobile on the date of March 22, 1965.

21. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 4 was made to suffer serious and permanent bodily injuries.

WHEREFORE, Plaintiff 4 prays judgment against the defendant in the sum of $200,000.00.

COUNT VI

22. Plaintiff 5 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of action under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 5 was a passenger in said automobile on the date of March 22, 1965.

23. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 5 was made to suffer serious and permanent bodily injuries.

(8)

WHEREFORE, Plaintiff 5 prays judgment against the defendant in the sum of $200,000.00.

COUNT VII

24. Plaintiff 6 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in Paragraphs 1 through 14, inclusively, ob both causes of action under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 6's intestate was a passenger in said automobile on the date of March 22, 1965.

25. As a result of the negligence and breach of warranty by the defendant, Plaintiff 6 was made to suffer serious and permanent bodily injuries.

WHEREFORE, Plaintiff 6 prays judgment against the defendant in the sum of $200,000.00.

COUNT VIII

26. Plaintiff 7 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, ob both causes of action under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff's 7's intestate was a passenger in said automobile on the date of March 22, 1965.

27. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 7's intestate, suffered instantaneous death.

WHEREFORE, Plaintiff 7 prays judgment against defendant in the sum of $250,000.00.

COUNT IX

28. Plaintiff 8 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of actions under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 8's intestate was a passenger in said automobile on the date March 22, 1965.

(9)

29. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 8 was made to suffer serious and permanent bodily injuries.

WHEREFORE, Plaintiff 8 prays judgment against the defendant in the sum of $200,000.00.

COUNT X

30. Plaintiff 9 reavers and realleges as a part of this cause of action under Count I, all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of action, under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 9's wife was a passenger in said automobile on the date of March 22, 1965.

31. Solely because of the negligence and breach of warranty by the defendant, Plaintiff 9's wife, was instantaneously killed on March 22, 1965 and as a consequence thereof, plaintiff 9 has been denied and will be denied his wife's services, including sexual relationship, and his comfort and happiness in her society and companionship.

WHEREFORE, Plaintiff 9 prays judgment against the defendant in the sum of $150,000.00.

COUNT XI

32. Plaintiff 10 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of actions under Count I of this Complaint with like effect as if herein fully repeated and further alleges that Plaintiff 10's minor son, an infant, was a passenger in the automobile in question on the said date of accident, to wit; March 22, 1965.

33. As a result of the Negligence and Breach of Warranty by the defendant, Plaintiff 10 was made to suffer serious and permanent bodily injuries.

WHEREFORE, Plaintiff 10 prays judgment against the defendant in the sum of 75,000.00.

(10)

COUNT XII

34. Plaintiff 11 reavers and realleges as a part of this cause of action under Count I all of the allegations contained in paragraphs 1 through 14, inclusively, of both causes of actions under Count I of this complaint with like effect as if herein fully repeated and further alleges that Plaintiff 11's minor son, an infant, was a passenger in the automobile in question on the date of said accident, to wit; March 22, 1965.

35. As a result of the negligence and breach of warranty by the defendant, plaintiff 11 was made to suffer serious and permanent bodily injuries.

WHEREFORE, Plaintiff 11 prays judgment against the defendant in the sum of $75,000.00.

s/Clement Theodore Cooper
CLEMENT THEODORE COOPER
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES !

(11)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

THOMAS S. HUNTER, 1
As Administrator of
Estate of HECTOR CHARLES
HUNTER, deceased
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 2
As Administrator of Estate
of HECTOR CHARLES HUNTER
and next friend of ANNIE
LAUREL HUNTER, deceased wife.
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 3
As next friend of JANICE ANN
HUNTER, deceased infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 4
As next friend of RAY HUNTER, an
infant
2925 Massachusetts Ave., S E.
Washington, D.C.

&

THOMAS S. HUNTER, 5
As next friend of ANTHONY HUNTER,
an infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

NELLIE MAE ARMSTRONG, 6
As Mother and next friend of
PEGGIE RUTH ARMSTRONG, minor,
Route 1, Box 285
Godwin, North Carolina

&

NELLIE MAE ARMSTRONG, 7
As Grandmother and next friend
of BERNARD ARMSTRONG, infant child,
deceased

(125)

Route 1, Box 285
Godwin, North Carolina

&

LILLIE MAE ARMSTRONG, 8
As Mother and next friend of
ELMER LEE ARMSTRONG
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 9
As Husband and next friend of
MARY LOUISE GILMORE, deceased
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 10
As Father and next friend of
LISA GILMORE, an infant
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 11
As Father and next friend of
LOUISE GILMORE
Route 1, Box 285
Godwin, North Carolina

Plaintiffs

VS.

CIVIL ACTION NO. 727-66

CENTER MOTORS, INCORPORATED
a corporation
1332 Rhode Island Avenue, N.E.
Washington, D.C.

Defendant

(13)

ANSWER

First Defense

Plaintiffs' complaint fails to state a cause of action entitling any of them to relief against this defendant.

Second Defense

Plaintiffs' claims for damages for wrongful death fail to state a claim entitling them to relief against this defendant by virtue of the fact that the complaint demonstrates deaths occurred in Virginia and are therefore governed by the appropriate Virginia wrongful death statutes. Moreover, plaintiffs' claim for wrongful deaths seek damages in excess of that provided for by the appropriate Virginia statutes.

Third Defense

The complaint of Miles Gilmore as husband and next friend of Mary Lois Gilmore, deceased, for wrongful death is not cognizable under Virginia law.

Fourth Defense

Defendant admits that in early February or late January of 1964 Hector Charles Hunter purchased from the defendant a 1958 Ford Fairlane 500 hard top used automobile bearing the Serial No. GSCV-129309. Defendant denies any negligence, carelessness, breach of duty, breach of warranty or misrepresentation with respect to all of the plaintiffs. Moreover, defendant is without knowledge or information sufficient to form a belief with respect to all other material allegations of plaintiffs' complaint and accordingly demands strict proof thereof. Defendant specifically denies that Hector Charles Hunter at any time advised defendant of that which is alleged in Paragraph 14 of plaintiffs(complaint.

Fifth Defense

The accident occurring on or about March 22, 1965 about which plain-

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tiffs complain in their complaint was the result of the sole negligence of Hector Charles Hunter on the date in question.

SIXTH DEFENSE

By virtue of the number of people in the automobile of Hector Charles Hunter on March 22, 1965 all the plaintiffs were either guilty of negligence or assumed the risk.

Seventh Defense

Defendant is without knowledge or information sufficient to form a belief as to whether plaintiffs are the proper party plaintiffs and/or have sufficient capacity to institute the claims herein and accordingly demands strict proof thereof.

COUNTERCLAIM

1. In early February or late January of 1964 defendant sold a certain 1958 Ford Fairlane 500 hard top used automobile bearing Serial No. GSCV-129 309 to Hector Charles Hunter. Defendant specifically denies that it was guilty of any negligence, carelessness, breach of duty, breach of warranty or misrepresentation with respect to any of the plaintiffs. Moreover, defendant specifically denies the allegations contained in Paragraph 14 of Plaintiffs' complaint. Defendant hypothetically asserts, however, that if it is for some reason deemed to be liable to any of the plaintiffs that liability will have been imposed upon the defendant by virtue of the negligence and breach of duty of Hector Charles Hunter and as a consequence defendant would be entitled to complete indemnity and exoneration from Hector Charles Hunter. In this hypothetical allegation defendant further relies upon the doctrine of last clear chance.

WHEREFORE, if it should be determined that defendant is liable to any of the plaintiffs, defendant demands judgment against Thomas S. Hunter, as administrator of the estate of Hector Charles Hunter, deceased, for complete indemnity and exoneration plus the cost of this action.

(15)

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Answer and Counterclaim was mailed, postage prepaid, this 6th day of April, 1966 to Clement Theodore Cooper, Esquire, Attorney for Plaintiffs, 918 F Street, N.W. (302), Washington, D.C.

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(1578)

THOMAS S. HUNTER, I, Et A.
as Administrator of
Estate of HECTOR CHARLES
HUNTER, 2925 Mass. Ave., N.E.
Washington, D.C.

Plaintiffs

vs.

Civil Action No. 727-66

CENTER MOTORS, INC.
a corporation
1332 Rhode Island Avenue, N.E.
Washington, D.C.

Defendant

ANSWER TO COUNTERCLAIM

First Defense

1. The counterclaim fails to state a claim upon which relief can be granted.

Second Defense

2. Plaintiff admits that defendant sold a certain 1958 Ford Fairlane 500 Hardtop used automobile to plaintiff's decedent. As to other matters contained in paragraph 1 of the counterclaim, plaintiff denies each and every allegation contained therein and demands strict proof thereof.

WHEREFORE, Plaintiffs pray that the counterclaim be dismissed.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W.
Washington, D.C. 20004

CERTIFICATE OF SERVICE

Copy of foregoing Answer to Counterclaim mailed, postage prepaid to Law Offices, Hogan & Hartson, 815 Conn. Ave. NW. April 18, 1966.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. As Administrator of Estate of HECTOR CHARLES HUNTER, deceased, Plaintiffs,	:	
vs.	:	Civil Action
CENTER MOTORS, INCORPORATED a corporation, Defendant.	:	No. 727-66

Washington, D. C.

Monday, September 12, 1966.

Deposition of:

ELMER LEE ARMSTRONG,

a plaintiff, called for examination by counsel for the defendant, pursuant to notice, a copy of which is attached to the court copy of this deposition, in the offices of Hogan & Hartson, Esquires, 815 Connecticut Avenue, Northwest, Washington, D. C. 20006, beginning at 4:00 o'clock, p. m., before

Nils E. Skavang, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

For the Plaintiffs:

CLEMENT THEODORE COOPER, ESQ.

For the Defendant:

JEREMIAH C. COLLINS, ESQ.

I N D E X

A Right.

Q After you started out for Washington and before the accident, did you stop and eat along the way at all?

A No, sir, we stopped after we passed Rocky Mount and slept about three hours.

Q You slept for about three hours?

A Yes, sir.

Q About what time was that?

A Well, we left there about a quarter past -- Let me see. About three o'clock, I would say.

Q What time did you arrive at Rocky Mount?

A I couldn't say. I don't know.

Q Were you asleep when you arrived at Rocky Mount?

A Yes, sir, but when we stopped I woke up and Hector got out of the car and woke me up. He came around on my side and he said "We are going to stop here and take a nap", and everybody in the car was asleep then but me and Hector after he woke me up.

Q And you stayed there for about how long?

A Three hours, I think.

Q Then, did you start up again?

A Yes, sir.

Q During those three hours did you sleep?

A Yes, sir.

Q How about Hector as far as you remember?

A Yes, sir, he was asleep.

Q Did you sleep after that?

A No, sir, after we left there I didn't sleep no more.

Q All right, where were you sitting in the car?

A I was sitting in the front seat on the righthand side.

Q Next to the door?

A Right.

Q And your uncle Hector was driving?

A Right.

Q Who else was in the front seat?

A His wife and she was in the center and I had a little girl, holding her in my lap.

Q Who was the little girl you were holding in your lap?

A Janice.

Q How old was Janice?

A No, I was holding Louise in my lap.

Q How old was Louise?

A She is about three years old.

Q Was there anyone else in the front seat other than

you and Hector's wife and Louise and Hector?

A No, there wasn't.

Q How many people were in the back seat?

A Six.

Q So there were ten people in the car?

A Eleven.

Q Eleven people in the car?

A Yes.

Q Well, were there six or seven in the back seat?

A It was seven in the back.

Q And four in the front?

A Right.

Q How many doors were on the car?

A Two doors.

Q How tall are you?

A How tall I am?

Q Yes.

A I am about five eleven.

Q How much do you weigh?

A About a hundred and sixty-five.

Q How tall was your uncle Hector?

A I would say about six feet, or five something.

Q About how much did he weigh?

A He weighed about a hundred and seventy, something like that.

Q How about his wife? About how tall was she?

A She was about five feet.

Q And about how much did she weigh?

A She weighed about a hundred and forty, thirty-five.

Q Were you awake or asleep at the time the accident happened?

A I was awake.

Q Was it daylight or darkness when the accident happened?

A It was daylight.

Q I understand the accident happened after you had passed Richmond and you were about ten miles beyond Richmond?

A Right.

Q What route were you on?

A Number One highway.

Q How many lanes were there for cars going in your direction?

A It was two lanes.

Q As you were proceeding along and shortly before the accident, was there a truck in front of you?

A No, sir, there wasn't.

Q At the time the accident happened or just before it happened, did you pass a truck?

A No, we passed a car.

Q You passed a car?

A Yes.

Q Do you drive?

A I do now. I didn't have a driver's license then.

Q You hadn't done any driving then?

A No, sir.

Q Well, would you be able to give me any estimate as to how fast your uncle was going?

A We were doing about fifty-five or fifty miles an hour.

Q About how fast was the car going that you passed?

A That we passed? Oh, I couldn't say how fast he was going.

Q Did you see who was in that car?

A The car that we passed?

Q Yes.

A It was one man by himself.

Q Did you look over at him?

A Yes, sir, me and Hector were sitti there talking then.

Q Tell me what you recall about the accident?

A You want to know what happened?

Q Tell me what happened?

A Well, when we passed this car, we passed him and came back on our side of the road, Hector looked at me and he said "Elmer, the steering is locked, I can't straighten this thing up", and I said "Jam on the brakes, jam on the brakes", and he mashed the brakes and it had no brakes. It had no brakes and that is all I remember. That's all I remember.

Q About how far is Coates from Richmond, do you know?

A No, sir, I don't.

Q Are you sure that you stopped for three hours?

A Yes, sir.

Q After you started out?

A Yes, sir.

Q Are you sure that you started out about one fifteen a. m.?

A Yes, sir, about one fifteen or twelve, either one or twelve.

Q Are you sure the accident happened about six a. m.?

A That's right, yes, sir.

Q Did the car go off the road?

A Yes, sir.

Q Did it go down a hill?

A Yes, sir.

Q Did it strike a tree?

A Yes, sir.

Q Did you see it strike a tree?

A No, sir.

Q Did you see it when it went down a hill?

A Yes, sir. When it went down that hill, that is all I remember.

Q Were you knocked out?

A Yes, sir.

Q Did the police come?

A I don't know. I was knocked out.

Q Did you ever talk to the police?

A Not that I can remember.

Q Did you go some place in an ambulance?

A I don't know.

Q Well, let me ask you this: Where did you wake up?

A In the hospital.

Q What hospital?

A St. Vincent's, Richmond, Virginia.

Q How long were you there?

A I stayed in there three weeks and four days.

Q Up until the time of the accident, had your uncle Hector had any trouble with the steering on the car?

A No, sir.

Q If he had, I take it he would have stopped and gotten it fixed?

A Yes, sir.

Q Up until the time the accident happened, had your uncle Hector had any trouble with the brakes?

A No, sir.

Q He drove down from Washington a day or so before, didn't he?

A Before the accident happened?

Q Yes.

A He drove down Saturday night.

Q And got there when?

A Sunday morning.

Q At nine o'clock?

A Just about nine o'clock.

Q About how long did it take him to drive down?

A Well, I don't know. I mean, I never did ask him for the time he was leaving. I don't know.

Q Did he ever say anything about having any trouble with the steering on the way down?

A No, he didn't.

Q Did he ever say anything about having any trouble with the brakes on the way down?

A He got down and he got out at the house and he said "Well, I made it all right. I had no trouble". He had no trouble.

Q As I understand it, after you passed this car your uncle then drove over into the righthand lane again?

A Yes, sir, he got back on his side straight.

Q And then he turned to you and said "The steering is locked"?

A Yes, he said "The steering is locked, I can't move the steering wheel". You see, the car was going down then.

Q And you said to him "Mash on the brakes"?

A I said "A. C., jam on the brakes". You see, I called him "A. C." I said "Jam on the brakes, A. C.", and he slammed on the brakes and he had no brakes.

Q What injuries did you sustain?

A You mean what --

Q Where did you get hurt in the accident?

A Well, I got my left eye hurt and I got eight bones broken up here (indicating).

Q Where is that?

A On my right side -- on my left side of my face (indicating). I got my left eye hurt. I can't see out of it, very little, and I got my jawbone broken in three places and my nose busted on this side (indicating) and got hurt down in the ribs on the right side.

Q You got hurt on the right side in the ribs?

A Yes, and my right knee.

Q Did you have any other injuries?

A Sir?

Q Did you have any other hurts?

A No, sir, that is all.

Q How long were you in the hospital?

A About three weeks and four days.

Q What do you do now? Do you work?

A Yes, sir.

Q Where do you work?

A I work in Jesse Jones Sausage Company.

Q Sausage Company?

A Yes, sir.

Q Where is that? In Raleigh?

A That's in Garland, North Carolina.

Q How long have you been working there?

A About three months.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

THOMAS S. HUNTER, 1
As Administrator of
Estate of HECTOR CHARLES
HUNTER, deceased
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 2
As Administrator of Estate
of HECTOR CHARLES HUNTER
and next friend of ANNIE
LAUREL HUNTER, deceased wife.
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 3
As next friend of JANICE ANN
HUNTER, deceased infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 4
As next friend of RAY HUNTER, an
infant
2925 Massachusetts Ave., S E.
Washington, D.C.

&

THOMAS S. HUNTER, 5
As next friend of ANTHONY HUNTER,
an infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

NELLIE MAE ARMSTRONG, 6
As Mother and next friend of
PEGGIE RUTH ARMSTRONG, minor,
Route 1, Box 285
Godwin, North Carolina

&

NELLIE MAE ARMSTRONG, 7
As Grandmother and next friend
of BERNARD ARMSTRONG, infant child,
deceased

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Route 1, Box 285
Godwin, North Carolina

&

LILLIE MAE ARMSTRONG, 8
As Mother and next friend of
ELMER LEE ARMSTRONG
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 9
As Husband and next friend of
MARY LOUISE GILMORE, deceased
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 10
As Father and next friend of
LISA GILMORE, an infant
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 11
As Father and next friend of
LOUISE GILMORE
Route 1, Box 285
Godwin, North Carolina

Plaintiffs

vs.

[redacted], INCORPORATED
a corporation
1332 Rhode Island Avenue, N.E.
Washington, D.C.

Defendant

CIVIL ACTION NO. 727-66

(50)

INTERROGATORIES TO THE PLAINTIFF THOMAS S. HUNTER

The following interrogatories are served upon you pursuant to Rule 33 Federal Rules of Civil Procedure. They are to be answered fully in writing under oath within fifteen days. There knowledge or information of the plaintiff is requested, such request includes knowledge of the plaintiff's agents, representatives and attorneys.

1. Please state the relationship of Thomas S. Hunter to each of the plaintiffs and to each of the plaintiffs for whom suit is brought.

2. Was Hector Charles Hunter employed during the week prior to March 22, 1965; and, if so, please state the name and address of the employer, how long Hector Charles Hunter had been employed with said employer and what Hector Charles Hunter's rate of pay was with that employer.

3. State the date and place of birth of Hector Charles Hunter and list any other names by which Hector Charles Hunter was ever known.

4. State the height and weight of Hector Charles Hunter on March 22, 1965.

5. What was the residence of Hector Charles Hunter at the time of his death?

6. What was the residence of Annie Laurel Hunter at the time of her death?

7. Was Annie Laurel Hunter the wife of Hector Charles Hunter? If so, give t the date, place and the name and address of the person performing the wedding ceremony.

8. Give the date of birth of Annie Laurel Hunter.

9. State the height and weight of Annie Laurel Hunter on March 22, 1965.

10. Was Annie Laurel Hunter em loyed during the week prior to March 22, 1965? If so, give the name and address of the employer, the length of time Annie Laurel Hunter was employed and the rate of pay received by Annie Laurel Hunter from said employer.

11. Give the date of birth of Janice Ann Hunter and her residence at the time of her death on March 22, 1965.

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12. State the height and weight of Janice Ann Hunter on March 22, 1965.

13. State the date of birth of Ray Hunter and give his residence as of March 22, 1965.

14. State the height and weight of Ray Hunter on March 22, 1965.

15. Does Ray Hunter know any of the circumstances leading up to and surrounding the accident?

16. If the answer to the preceding interrogatory is in the affirmative, is Ray Hunter capable of testifying as to any of the circumstances leading up to and surrounding the accident?

17. Will Ray Hunter be called to testify at the trial as to any of the circumstances leading up to and surrounding the accident?

18. Specify with particularity the injuries claimed to have been received by Ray Hunter as the result of the accident about which complaint is made in the complaint instituting this action.

19. Was Ray Hunter hospitalized as a result of the accident about which complaint is made? if so, list the name and address of each hospital where he was so hospitalized.

20. Will plaintiff voluntarily provide defendant with an authorization to inspect and copy (the expense for this will be borne by defendant) the records of each of the hospitals listed in answer to the preceding interrogatory?

21. State the name and address of every physician who has examined, treated or cared for Ray Hunter since March 21, 1965.

22. State where and with whom Ray Hunter now lives?

23. Does Ray Hunter attend school; and, if so, state the name and address of the school and the grade that he is in.

24. State the date of birth of Anthony Hunter and give his residence as of March 22, 1965.

(33)

25. State the height and weight of Anthony Hunter on March 22, 1965.

26. Does Anthony Hunter know any of the circumstances leading up to and surrounding the accident?

27. If the answer to the preceding interrogatory is in the affirmative, is Anthony Hunter capable of testifying as to any of the circumstances leading up to and surrounding the accident?

28. Will Anthony Hunter be called to testify at the trial as to any of the circumstances leading up to and surrounding the accident?

29. Specify with particularity the injuries claimed to have been received by Anthony Hunter as the result of the accident about which complaint is made in the complaint instituting this action.

30. Was Anthony Hunter hospitalized as a result of the accident about which complaint is made? If so, list the name and address of each hospital where he was so hospitalized.

31. Will plaintiff voluntarily provide defendant with an authorization to inspect and copy (the expense for this will be borne by defendant) the records of each of the hospitals listed in answer to the preceding interrogatory?

32. State the name and address of every physician who has examined, treated or cared for Anthony Hunter since March 21, 1965.

33. State where and with whom Anthony Hunter now lives?

34. State does Anthony Hunter attend school; and if so, state the name and address of the school and the grade that he is in.

35. State the name and address of every person known to you or your attorneys to have been a witness to the accident of March 22, 1965.

36. State the name and address of every person known to you or your attorneys to have been a witness to the events leading up to and surrounding the accident of March 22, 1965.

37. Do you know of the present whereabouts of the automobile that was involved in the accident of March 22, 1965?

38. If so, please state its present location.

39. Was the automobile that was involved in the accident of March 22, 1965 inspected by anyone after the accident?

40. If the answer to the preceding interrogatory is in the affirmative, please state when the automobile was so inspected, where the automobile was inspected and the name and address of each person inspecting the automobile.

41. If the automobile involved in the accident of March 22, 1965 was inspected were there any reports made of the inspection; and, if so, please state the name and address of each person making said report, the date of each said report and in whose possession each said report is now.

42. Were there any pictures taken of the automobile involved in the accident of March 22, 1965 after the accident?

43. If the answer to the preceding interrogatory is in the affirmative, state the date and place the pictures were taken and the name and address of the person taking the pictures and state who presently has possession of the said pictures.

44. State the name and address of every person known to you or your attorneys who has knowledge of any of the allegations contained in paragraph 14 of plaintiffs' complaint.

45. In paragraph 14 of plaintiffs' complaint it is stated that plaintiff's intestate had on numerous occasions given notice to the defendant of the defective condition of the automobile. With respect to this allegation, state the precise dates on which said notice was supposedly given, the name and address of each person present, the precise words spoken, the person speaking, and the name and address of the person speaking the words and the name and address of the person to whom the words were spoken.

46. With respect to paragraph 14 of plaintiffs' complaint, state the date upon which plaintiff's intestate allegedly abandoned said automobile,

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at defendant's place of business and state the precise time that said automobile was so abandoned at Defendant's place of business and the name and address of each person that was present at the alleged time of abandonment and whether any words were spoken at the time of the alleged abandonment and if so the name and address of the person speaking the words and the name and address of the person to whom the words were spoken.

47. Was the automobile involved in the accident of March 22, 1965 possessed of an inspection sticker from the District of Columbia?

48. If the answer to the prededing interrogatory is in the affirmative, state the date the automobile was inspected, the place of its inspection and whether prior to the receipt of the inspection sticker the District of Columbia required that any repairs be performed upon said automobile.

49. If the answer to the preceding interrogatory has indicated that repairs were necessary before the issuance of the District of Columbia inspection certificate, state the name and address of the person or corporation making the said repairs, the date and place of the repairs and what repairs were performed.

50. Since February 3, 1964 was the automobile involved in the accident on March 22, 1965 servied or repaird in any fashion up until the time of the accident of March 22, 1965.

51. If the answer to the preceding interrogatory is in the affirmative, state the dates on which the automobile was serviced and repaired, giving the name and address of the person or corporation performing the said service and repairs and state with respect to each instance precisely what services or repairs were performed.

52. State the mileage shown on the automobile involved in the accident on March 22, 1965 as of February 3, 1964.

53. State the mileage on the automobile involved in the accident of March 22, 1965 as of March 21, 1965.

54. Had the automobile involed in the accident of March 22, 1965 been

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involved in any accident between February 3, 1964 and March 22, 1965?

56. If the answer to the preceding interrogatory is in the affirmative, give the date and place of each said accident and describe in detail the nature of said accident and whether any repairs were necessary as a result of any said accident.

57. With respect to the answer to the preceding interrogatory, if any repairs were necessary as a result of any of said accidents, please state the date said repairs were performed and the name and address of said person or corporation performing said repairs and the nature of said repairs.

58. Was the automobile involved in the accident of March 22, 1965 repaired or serviced between January 5, 1965 and March 22, 1965?

59. If the answer to the preceding interrogatory is in the affirmative, state each date on which said automobile was serviced and/or repaired and give the name and address of each person or corporation performing said services and/or repairs and i dicate the nature of said services and/or repairs on each said occasion.

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins
815 Connecticut Avenue, N.W.
Washington, D C. 20006

Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Interrogatories to the Plaintiff Thomas S. Hunter was mailed, postage prepaid, this 7th day of April, 1966 to Clement Theodore Cooper, Esquire, Attorney for Plaintiffs, 918 F Street, N.W. (302) Washington, D.C.

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins

Attorneys for Defendant

(35)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, as Administrator of Estate of HECTOR CHARLES HUNTER, dec., Et. Al., Plaintiffs vs. CENTER MOTORS, INCORPORATED a corporation Defendant	Civil Action No. 727-66

ANSWERS TO INTERROGATORIES PROPOUNDED TO PLAINTIFF THOMAS S. HUNTER

1. ~~Brother~~ of Plaintiff 1 - Brother-in-law of Plaintiff 2; Uncle of Plaintiff 3, uncle of Plaintiffs 4 & 5; not related to plaintiff 6, 7, 8, 9, 10 & 11. Thomas S. Hunter - Administrator of Estate of HECTOR CHARLES HUNTER, deceased.

2. Yes. Washington Gas Light Co., 1100 H Street, N.W., Washington, D.C., Rate of pay - averaged $100.00 per week.

3. D.O.B. July 16, 1931, St. Paul, North Carolina, Robinson County.

4. 6 ft. 155 lbs.

5. 927 P Street, NW.

6. Same as 5.

7. Yes. Married at Dillon, South Carolina in 1954 by J. E. Edwards.

8. July, 1936.

9. 5'4" - 170 lbs.

10. Yes. John R. Miner, 4716 Fessenden St.,N.W., Washington, D.C. from March, 1964 to March 22, 1965 earned $30.00 per week.

11. June 22, 1956, 927 P Street, N.W., Washington, D.C.

12. unknown.

13. Nov. 12, 1958, 927 P Street, N.W., Washington, D.C.

14. unknown.

15. No. Too young to know.

16. No Permanently injured. Child of tender years.

17. No.

18. Ray Hunter is still confined to Hospital. Will forward hospital

(37)

19. Yes. Medical College of Virginia, Richmond, Va.

20. Yes.

21. Can be obtained from Hospital Records.

22. Still in Hospital. See Answer to question 18.

23. No.

24. March 17, 1963, 927 P Street, N W. Washington, D.C.

25. I don't know.

26. No.

27. No.

28. No.

29. Introabdominal bleeding; multiple lacerations of liver, avulsion of gall bladder, fracture of left tibia, cerebral concussion, fractured vertibrae, fracture of 9th, 10th, 11th & 12th ribs.

30. Yes. Medical College of Virginia - Richmond, Va.

31. Yes.

32. Dr. James White; Dr. Arnold Salzbury, Dr. J. R. Morns, Dr. John Rawls, all of medical College of Virginia, hospital staff.

33. Mr & Mrs J. Y Hunter
204 A Street - Lumberton, North Carolina.

34. No.

35. Mr. Lewis E. Minson - 1011 West Grace Street
Richmond, Virginia.

36. Elmer Lee Armstrong - 423 South Haywood, Raleigh, N.C.
Peggy Ruth Armstrong - 949 T Street, N W. Washington, D.C.
L. T. Robinson - 4255 Foote St.,NE. #4 Washington, D.C.
Miles Gilmore - 303 - 50th St.,N E. #4 Washington, D.C.
John Armstrong, present address unknown.

37. No. Last resting place of auto was Stanley Brother's Amoco Service Station - Route 1, Richmond, Va.

38. See answer to question 37.

39. Yes.

40. Routine inspection after accident by Officer Pugh, Virginia State Police Department, Richmond, Va. on morning of accident, March 22, 1965.

41. No formal reports made as such other than information furnished by officer Pugh from his routine inspection and this inspection was not a strict mechanical inspection.

42. Yes.

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43. March 22, 1965 at scene of accident. Virginia State Police Department of Richmond, Virginia.

44. L. J. Robinson - 4255 Foote St.,N E. #4 Washington, D.C.
Peggy Ruth Armstrong - 949 T Street, N.W. #3 Washington, D.C.
John Armstrong, address unknown as of this date.
Thomas S. Hunter - 2529 Mass. Ave., S.E. Washington, D.C.

45. December 12, 1964 arcund 11:00 A.M. or thereabouts - decedent spoke with a salesman at Center Motors - told him that he had sold him a peice of junk and that the car was no good and was a hazard to himself and his family.

46. Auto was abandoned on December 12, 1964 around 11:00 A.M. - decedent told salesman that he was not going to pay for the peice of junk. See answer to question 45 above.

47. Yes.

48. Auto was to be inspected for second ycar in May, 1965 about two months prior to the accident.

49. Before issuance of first approved sticker, April 8, 1964, the following defects were found by the D. C. Motor Vehcles Inspection Station: Steering alighment defective, auxiliary brakes defective, brake equilization defective, directional signal defective, rear lights defective, steering oOeration defective, including king pins, ball joints, worm & sector, tie rod ends drag link, control arms, shock absorbers, springs & schackles, axles, wheel bearings, realighment. Taken to Center Motors for Corrections.

50. No. Other than repairs as stated in answer to 49.

51. N/A. Center Motors, Inc. or it's duly authorized agent.

52. I don't know.

53. I don't know.

54. No.

55. No questions propounded herein interrogatories. Defendant has omitted question 55.

56. N/A.

57. N/A.

58. Not to my knowledge.

59. N/A.

s/Thomas S. Hunter
Thomas S. Hunter

Subscribed and sworn to before me this 27th day of June, 1966.

s/Don Lockett Young
NOTARY PUBLIC, D.C.

(37)

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004
EXecutive 3-3900

CERTIFICATE OF SERVICE

Copy of foregoing answers to interrogatories mailed, postage prepaid to Law Offices, Hogan & Hartson, Attorneys for Defendant, 815 Connecticut Ave.,N.W., Washington, D.C. this 27th day of June, 1966.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs

(-10)

1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. As Administrator of Estate of HECTOR CHARLES HUNTER, deceased, Plaintiffs, vs. CENTER MOTORS, INCORPORATED a corporation, Defendant.	Civil Action No. 727-66

Washington, D. C.

Wednesday, July 13, 1966.

Deposition of:

PEGGY RUTH ARMSTRONG,

a plaintiff, called for examination by counsel for the defendant, pursuant to notice, a copy of which is attached to the court copy of this deposition, in the offices of Hogan & Hartson, Esquires, 815 Connecticut Avenue, Northwest, Washington, D. C. 20006, beginning at 4:00 o'clock, p. m., before

Nils B. Skavang, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

For the Plaintiffs:

CLEMENT THEODORE COOPER, ESQ.

For the Defendant:

JEREMIAH C. COLLINS, ESQ.
and
DONALD DELL, ESQ.

- - -

I N D E X

- - - - -

- - -

A Yes, my aunt was holding her baby.

Q So t here were six people in the back seat?

A Yes.

Q All right, now, how many people in the front seat?

A Five.

Q Who were the five people in the front seat?

A Hector and Laurel and Elmer Lee, Louise and the baby. I have forgotten the baby's name. Anthony.

Q Do you know about how far it is to drive from Godwin to Washington, D. C.?

A No.

Q Had you gone to Godwin for the funeral?

A Yes.

Q So you were coming back from Godwin to the District of Columbia, right?

A Yes.

Q Do you recall about how long it took you to drive down?

A We left here about twelve o'clock Saturday night, about ten minutes to twelve.

Q And you told me you got down there about eight o' clock?

A About eight o'clock.

Q About eight o'clock in the morning?

A Yes.

Q And what time did you leave from Godwin to come back to Washington?

A About eleven o'clock Sunday night.

Q I understand you don't know what time the accident happened but you think it happened some time early in the morning?

A Yes.

Q Were you awake or asleep at the time the accident happened?

A Asleep.

Q How long had you been asleep?

A I went to sleep as soon as we pulled out from Godwin?

Q I take it, you hadn't had much sleep while you were down there?

A No.

Q What had Hector done while he was down in Godwin, do you know?

A I don't know.

Q When you left Godwin to come back to Washington, was Hector driving?

A Yes.

Q Did anyone else in the car know how to drive?

A Yes.

Q Who else knew how to drive?

A My cousin knew how to drive, I knew how to drive, my aunt knew how to drive, but none of us drove but my uncle because none of us had any license.

Q I see. Your uncle drove from Washington to Godwin?

A Yes.

Q Did he drive from Godwin to the time of the accident?

A Yes.

Q On the way down, did you have any trouble with the car?

A No.

Q On the way back, before the accident happened, did you have any trouble with the car?

A No.

Q Had you ever ridden in the car when there had been any trouble with the car?

A No.

Q Had you ever heard your uncle complain about the car?

A No.

Q I take it, you couldn't tell me anything about the

accident?

A No.

Q What was your first awareness that an accident had happened?

A Well, my first what?

Q Well, when did you first know that an accident had happened?

A About two or three weeks after it happened.

Q Were you in the car when the accident happened?

A Yes.

Q After the accident happened, did you wake up?

A No.

Q Do you remember police arriving at the scene?

A No.

Q Do you remember ambulances arriving at the scene?

A No.

Q Where did you wake up after the accident?

A In the hospital.

Q What hospital was that?

A Richmond Memorial.

Q Do you know about how many miles the car had on it when the accident happened?

A No.

Q Has anyone ever told you how the accident happened?

A Yes.

Q Who told you?

A Well, my uncle.

Q Your uncle?

A Yes.

Q What uncle is that?

A Paul Armstrong and my father and my mother.

Q Was your uncle, Paul Armstrong, in the car?

A No. They didn't tell me how it happened. They told me that they didn't know how it happened. All they told me, we went down an embankment and hit a tree and that is all I know. I mean, I don't know -- Only what they told me, that is all.

Q The only thing anyone has told you is that the car went down a bank and hit a tree?

A Yes.

Q No one has ever told you why or how the accident happened?

A No.

Q Have you ever talked to Elmer Lee Armstrong about the accident?

A Yes, we talked about it.

Q How old is he?

A Nineteen.

Q Did he know how the accident happened?

A Well --

Q I mean, did he ever tell you how the accident happened?

A No, he never told me how it happened.

Q Did you ever ask him?

A No.

Q Was he in the hospital with you?

A No.

A No.

Q In March of '65 where was Elmer Lee Armstrong living?

A Coats, North Carolina.

Q Now, had he ridden from Washington down?

A No.

Q I take it, he was coming from Godwin to go back to Washington, is that right?

A Yes.

Q Had he ever lived in Washington?

A No.

Q Why was he coming to Washington?

A He said he wanted to get a good job.

Q What happened to you in the accident?

A What happened to me?

Q Yes, what injuries did you have?

A My ankle got broken.

Q Which ankle was that?

A Left.

Q Did they put that in a cast?

A Yes.

Q How long did you have the cast on?

A I can't remember.

Q How is the ankle now?

A I don't know. I mean, it is not completely well, but it still bothers me.

Q When does it bother you?

A Mostly when it rains.

Q Did you have any other injuries?

A My pelvic bone was broken.

Q How is that now?

A It still bothers me when I sit down a long time.

Q Did you have any other injuries?

A I got cut in my back.

Q Where did you get the cut in your back?

A On my left side (indicating).

(49)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al.
As Administrator of Estate of
HECTOR CHARLES HUNTER, Deceased

Plaintiffs

v.

CENTER MOTORS, INCORPORATED
a corporation

Defendant

Civil Action No. 727-66

REQUEST TO PLAINTIFF THOMAS S. HUNTER
FOR ADMISSIONS

Defendant Center Motors, Inc. pursuant to Rule 36, F.R.C.P., requests plaintiff Thomas S. Hunter within ten days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

(1) That each of the following documents, exhibited with this request, is genuine:

(a) "Car Order and Bill of Sale" between Hector Hunter and Center Motors, Inc., relating to one 1958 Ford Fairlane 500, Hardtop, Serial Number G8CV-129309.

(b) "Used Vehicle Guarantee" between Hector Hunter and Center Motors, Inc., relating to one Ford, Serial Number G8CV-129309.

(2) That the following statement is true with respect to the automobile described in paragraph (4) of the Complaint, which plaintiff Thomas S. Hunter has stated in his Answer to Interrogatory No. 46 was abandoned on December 12, 1964: Hector Hunter reassumed possession of the automobile on or about January 5, 1965.

(50)

HOGAN & HARTSON

CARL L. TAYLOR

By _____
Carl L. Taylor
Counsel for Defendant
815 Connecticut Avenue
Washington, D.C. 20006
298-5500

CERTIFICATE OF SERVICE

A copy of the foregoing Request to Plaintiff Thomas S. Hunter for Admissions was mailed, postage prepaid, this 22nd day of March, 1967, to Clement Theodore Cooper, Esq., Counsel for Plaintiffs, 918 F Street, N.W. (302), Washington, D.C. 20004.

HOGAN & HARTSON

CARL L. TAYLOR

By _____
Carl L. Taylor
Counsel for Defendant

Bennett

(51)

CAR ORDER AND BILL OF SALE

DEALER: CENTER MOTORS INC. Stock No. 1538

PURCHASER: HUNTER HESTER Date 1-30-64

Please enter my order for one Used Car as follows:

Year	Make	Model	Body	Serial No.
1958	FORD	F-100	PU	G8DV-129309

		THIS COLUMN IF NOT FINANCED	THIS COLUMN IF TO BE FINANCED
CASH PRICE OF CAR			$ 995 —
ALL OTHER CHARGES (Itemize)			
Excise Tax	$ 17.90		
Registration Fee	$ 16.25		
Inspection Fee	$ 1.00		
Certificate of Title	$ 1.00		
Transfer Fee	$ ———		
Recorder of Deeds	$ 1.00		
Notary & Service & Tempo. Tags	$ 6.00		
Uninsured Driver	$		
TOTAL D.C. TAGS		$ 43.15	$ —
TOTAL CASH SALES PRICE			$ 845 —
CASH DOWN PAYMENT		$ 5.00	
TRADE-IN ALLOWANCE	$		
Less: Balance Due To:	$		
Net Equity		$	
Year: ... Make: ... Body: ... Model: ...			
Serial ... Stock No. ...			
TOTAL DOWN PAYMENT			$ 890 —
TOTAL CASH PRICE BALANCE			$
SUMMARY OF INSURANCE COVERAGE (This insurance within its limits shall cover purchaser and seller as their interests may appear at time of loss. Insurance coverage for property damage or personal injuries is not included herein.)			
Fire & Theft ACV	$		
Collision $ Deductible	$		
Other Ins. (Itemize)	$		
	$		
Total Cost of Insurance			$
Term of Insurance months.			
Name of Agent-Broker:			
Name of Insurance Company if known:			
Name of Finance Co.			
AMOUNT OF FINANCE CHARGE			$
TOTAL TIME PRICE BALANCE DUE FROM PURCHASER			$ 890 —

TERMS OF PAYMENT: ONE Payments of $ 50.00 Each, Payable on the 24TH Day of Each Month, Beginning JANUARY 19 64, and a final Payment of $ ———

This car is purchased AS IS, unless otherwise specified in writing, as follows: AS PER VIP II WARRANTY

The front and back of this Order comprise the entire agreement affecting this purchase. No other agreement, understanding, representation or warranty of any nature concerning same has been made or entered into, or will be recognized or binding.

I have read the matter printed in the back hereof and agree to it as a part of this order the same as if it were printed above my signature.

BUYER'S SIGNATURE X Hunter Hester

ADDRESS 1636 VERMONT AVE NW

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER

Accepted By: Date

BENNETT 6710 CENTER MOTORS INC. 1-30-64

SALESMAN DEALER'S SIGNATURE

Typeset, Dept. of Licenses, D. C., March 1959

(62)

CENTER MOTORS, INC.

1333 RHODE ISLAND AVENUE, N. E.
WASHINGTON, D. C.
Phone 529-8550

Approved
Used Vehicle Guarantee

PURCHASER [illegible] (NAME) [illegible] (ADDRESS)

[illegible] D.C.
(CITY AND STATE) (PHONE)

CAR FORD HT 1538
(MAKE) (BODY TYPE) (STOCK NO.)

6R24J129309 1-20-64
(SERIAL NO.) (MOTOR NO.) (DELIVERY DATE) (SPEEDOMETER READING)

Guarantee

The automobile covered by this guarantee is warranted as defined by the dealer herein for the exclusive benefit of the purchaser for a period of thirty (30) days from the date of delivery, or one thousand (1,000) miles, whichever occurs first. This 50-50 guarantee means that the dealer will make any necessary mechanical repairs in his shop at a cost to the buyer of only 50% of the dealer's current list on both parts and labor, except where such repairs have become necessary by abuse, negligence, or collision.

This guarantee includes all repairs necessary to pass D. C. or VA. inspection with the exception of the following which are to be at purchaser's expense. A. Front End Alignment
B. Wheel Balancing C. Headlight Adjustment

No guarantee is made with respect to mileage, tires and tubes, glass, paint, upholstery, electrical equipment, batteries, speedometers, clocks, radios, or trade accessories.

The obligation of the dealer issuing this guarantee is expressly limited to replacement or repairs at his place of business and does not include bills contracted elsewhere, or towing charges.

No other guarantees, representations, or agreements, expressed or implied, have been made to the buyer.

Purchaser agrees to advance all monies due to Center Motors for repairs payable prior to release of automobile.

[signature]
SIGNED PURCHASER

[signature]
SELLER

(53)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Division

THOMAS S. HUNTER, 1
As Administrator of
Estate of HECTOR CHARLES
HUNTER, deceased
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 2
As Administrator of Estate
of HECTOR CHARLES HUNTER
and next friend of ANNIE
LAUREL HUNTER, deceased wife.
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 3
As next friend of JANICE ANN
HUNTER, deceased infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

THOMAS S. HUNTER, 4
As next friend of RAY HUNTER, an
infant
2925 Massachusetts Ave., S E.
Washington, D.C.

&

THOMAS S. HUNTER, 5
As next friend of ANTHONY HUNTER,
an infant
2925 Massachusetts Ave., S.E.
Washington, D.C.

&

NELLIE MAE ARMSTRONG, 6
As Mother and next friend of
PEGGIE RUTH ARMSTRONG, minor,
Route 1, Box 285
Godwin, North Carolina

&

NELLIE MAE ARMSTRONG, 7
As Grandmother and next friend
of BERNARD ARMSTRONG, infant child,

(5741)

Route 1, Box 285
Godwin, North Carolina

&

LILLIE MAE ARMSTRONG, 8
As Mother and next friend of
ELMER LEE ARMSTRONG
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 9
As Husband and next friend of
MARY LOUISE GILMORE, deceased
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 10
As Father and next friend of
LISA GILMORE, an infant
Route 1, Box 285
Godwin, North Carolina

&

MILES GILMORE, 11
As Father and next friend of
LOUISE GILMORE
Route 1, Box 285
Godwin, North Carolina

Plaintiffs

VS.

CIVIL ACTION NO. 727-66

CENTER MORTGAGE, INCORPORATED
a corporation
1332 Rhode Island Avenue, N.E.
Washington, D.C.

Defendant

(557)

12. Does Lisa Gilmore know any of the circumstances leading up to and surrounding the accident?

13. If the answer to the preceding interrogatory is in the affirmative, is Lisa Gilmore capable of testifying as to any of the circumstances leading up to and surrounding the accident?

14. Will Lisa Gilmore be called to testify at the trial as to any of the circumstances leading up to and surrounding the accident?

15. Specify with particularity the injuries claimed to have been received by Lisa Gilmore as the result of the accident about which complaint is made in the complaint instituting this action.

16. Was Lisa Gilmore hospitalized as a result of the accident about which complaint is made? If so, list the name and address of each hospital whereshe was so hospitalized.

17. Will plaintiff voluntarily provide defendant with an authorization to inspect and copy (the expense for this will be borne by defendant) the records of each of the hospitals listed in answer to the preceding interrogatory?

18. State the name and address of every physician who has examined, treated or cared for Lisa Gilmore since March 21, 1965.

19. State where and with whom Lisa Gilmore now lives?

20. Does Lisa Gilmore attend school; and, if so, state the name and address of the school and grade she is in.

21. State the date of birth of Louise Gilmore and give her residence as of March 22, 1965.

22. State the height and weight of Louise Gilmore on March 22, 1965.

23. Does Louise Gilmore know any of the circumstances leading up to and surrounding the accident?

24. If the answer to the preceding interrogatory is in the affirmative, is Louise Gilmore capable of testifying as to any of the circumstances leading up to and surrounding the accident?

25. Will Louise Gilmore be called to testify at the trial as to any of the circumstances leading up to and surrounding the accident?

26. Specify with particularity the injuries claimed to have been received by Louise Gilmore as the result of the accident about which complaint is made in the complaint instituting this action.

27. Was Louise Gilmore hospitalized as a result of the accident about which complaint is made? If so, list the name and address of each hospital where she was so hospitalized.

28. Will plaintiff voluntarily provide defendant with an authorization to inspect and copy (the expense for this will be borne by defendant) the records of each of the hospitals listed in answer to the preceding interrogatory?

29. State the name and address of every physician who has examined, treated or cared for Louise Gilmore since March 21, 1965.

30. State where and with whom Louise Gilmore now lives?

31. Does Louise Gilmore attend school; and, if so, state the name and address of the school and the grade that she is in.

32. State the name and address of every person known to you or your attorneys to have been a witness to the accident of March 22, 1965.

33. State the name and address of every person known to you or your attorneys to have been a witness to the events leading up to and surrounding the accident of March 22, 1965.

34. Do you know of the present whereabouts of the automobile that was involved in the accident of March 22, 1965?

35. If so, please state its present location.

36. Was the automobile that was involved in the accident of March 22, 1965 inspected by anyone after the accident?

37. If the answer to the preceding interrogatory is in the affirmative, please state when the automobile was so inspected, where the automobile was inspected and the name and address of each person inspecting the automobile.

(57)

38. If the automobile involved in the accident of March 22, 1965 was inspected were there any reports made of the inspection; and, if so, please state the name and address of each person making said report, the date of each said report and in whose possession each said report is now.

39. Were there any pictures taken of the automobile involved in the accident of March 22, 1965 after the accident?

40. If the answer to the preceding interrogatory is in the affirmative, state the date and place the pictures were taken and the name and address of the person taking the pictures and state who presently has possession of said pictures.

41. State the name and address of every person known to you or your attorneys who has knowledge of any of the allegations contained in paragraph 14 of plaintiffs' complaint.

42. In Paragraph 14 of plaintiffs' complaint it is stated that plaintiff's intestate had on numerous occasions given notice to the defendant of the defective condition of the automobile. With respect to this allegation, state the precise dates on which said notice was supposedly given, the name and address of each person present, the precise words spoken and the name and address of the person speaking the words and the name and address of the person to whom the words were spoken.

43. With respect to paragraph14 of plaintiffs' complaint, state the date upon which plaintiff's intestate allegedly abandoned said automobile at defendant's place of business and state the precise time that said automobile was so abandoned at defendant's place of business and the name and address of each person that was present at the alleged time of abandonment and whether any words were spoken at the time of the alleged abandonment and if so the name and address of the person speaking the words and the name and address of the person to whom the words were spoken.

(57)

44. Was the automobile involved in the accident of March 22, 1965 possessed of an inspection sticker from the District of Columbia?

45. If the answer to the preceding interrogatory is in the affirmative, state the date the automobile was inspected, the place of its inspection and whether prior to the receipt of the inspection sticker the District of Columbia required that any repairs be performed upon said automobile.

46. If the answer to the preceding interrogatory has indicated that repairs were necessary before the issuance of the District of Columbia inspection certificate, state the name and address of the person or corporation making the said repairs, the date and place of the repairs and what repairs were performed.

47. Since February 3, 1964 was the automobile involved in the accident on March 22, 1965 serviced or repaired in any fashion up until the time of the accident of March 22, 1965.

48. If the answer to the preceding interrogatory is in the affirmative, state the dates on which the automobile was servied and repaired, giving the name and address of the person or corporation performing the said service and repairs and state with respect to each instance precisely what services or repairs were performed.

49. State the mileage shown on the automobile involved in the accident on March 22, 1965 as of March 21, 1965.

50. State the mileage on the automobile involved in the accident of March 22, 1965 as of March 21, 1965.

51. Had the automobile involved in the accident of March 22, 1965 been involved in any accident between February 3, 1964 and March 22, 1965?

52. If the answer to the preceding interrogatory is in the affirmative give the date and place of each said accident and describe in detail the nature of said accident and whether any repairs were necessary as a result of any said accident.

(57)

53. With respect to the answer to the preceding interrogatory, if any repairs were necessary as a result of any of said accidents, please state the date said repairs were performed and the name and address of said person or corporation performing said repairs and the nature of said repairs.

54. Was the automobile involved in the accident of March 22, 1965 repaired or serviced between January 5, 1965 and March 22, 1965?

55. If the answer to the preceding interrogatory is in the affirmative, state each date on which said automobile was serviced and/or repaired and give the name and address of each person or corporation performing said services and/or repairs and indicate the nature of said service and/or repair on each said occasion.

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins
815 Connecticut Avenue, N.W.
Washington, D.C.

Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing Interrogatories to the Plaintiff Miles Gilmore was mailed, postage prepaid, this 7th day of April, 1966 to Clement Theodore Cooper, Esquire, Attorney for Plaintiffs, 918 F Street, N.W. (302) Washington, D.C.

HOGAN & HARTSON

By s/Jeremiah C. Collins
Jeremiah C. Collins

Attorneys for Defendant

(60)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, As Admin. of Estate of Hector Charles Hunter, deceased, Et Al.

Plaintiffs

vs.

CENTER MOTORS, INCORPORATED a corporation

Defendant

Civil Action No. 727-66

ANSWERS TO INTERROGATORIES PROPOUNDED TO PLAINTIFF MILES GILMORE

1. Mary Lois Gilmore, D.O.B. unk.
2. 5 ft. 120 lbs.
3. Benneville, South Carolina, September, 1959.
4. Yes.
5. Returning Home, 927 P Street, N.W.
6. P Street address - planned on remaining here.
7. Unemployed.
8. Yes. London Hill Hotel, Bethesda, Maryland, 1 year earned $60.00 per week.
9. Yes. T. M. Woodall, Inc., Chillum, Md., 6 months, earned $7125 per week.
10. 3 years old - 927 P St.,N W.
11. 2" tall - 60 lbs.
12. No.
13. No.
14. No.
15. Head Injuries - Multiple Bodily Injuries.
16. Richmond Memorial Hospital, Richmond, Virginia.
17. Yes.
18. Can be obtained from Hospital Records.
19. Lives with Mrs Flora Armstrong, maternal grandmother, Route 1 Box 285, Godwin, North Carolina.

(61)

20. No.

21. 4 years old. 927 P Street, N.W.

22. 3½ tall - 40 lbs.

23. No.

24. No.

25. No.

26. Broken legs (both) multiple bodily injuries.

27. Yes. Richmond Memorial Hospital, Richmond, Virginia.

28. Yes.

29. Can be taken from Hospital Records.

30. Grandmother - Mrs Flora Armstrong, Route 1, Box 285, Godwin, North Carolina.

31. No.

32. Elmer Lee Armstrong, 423 South Haywood, Raleigh, N.C. Peggy Ruth Armstrong, 949 T Street, N.W. Washington, D.C.

33. Peggy Ruth Armstrong - address as above.
Miles Gilmore - 303 - 50th St.,N.E. #4 Washington, D.C.
L. J. Robinson - 4255 Foote St.,N.E. #4, Washington, D.C.
John Armstrong - present address unknown.

34. No.

35. Unk.

36. Yes. Richmond State Highway Police, Virginia.

37. See Answer to 36.

38. Yes. Virginia State Highway Police, Richmond, Virginia.

39. Yes.

40. March 22, 1965 - Richmond Police Depmt - same as Va. State Police.

41. Miles Gilmore - 303 50th St.,N.E. #4 Washington, D.C.
L. J. Robinson 4255 Foote St.,N.E. #4, Washington, D.C.
Municipal Court Records C.A. No. C 19920-64

42. Around December 12, 1964 - in A.M. Spoke with a salesman at Center Motors, Inc.

43. I don't know the date of abandonment.

44. Yes.

(62)

45. Auto was taken for inspection March 27, 1964 but was rejected for numerous mechanical defects. Auto was finally taken for inspection twice on April 8, 1964 and was issued approved sticker the second time on April 8, 1964.

46. Repairs to be performed: Steering alighment defective, auxiliary brakes defective, brake equilization defective, directional signal defective, rear lights defective, steering operation defective including king pins, ball joints, worm & sector, tie rod ends, drag link, control arms, shock absorbers, springs & shackles, axles, wheel bearings, realighment. Taken to Center Motors for corrections March 27, 1964 and April 8, 1964.

47. I don't know.

48. N/A.

49. Unknown.

50. Unknown.

51. No.

52. N/A.

53. Unknown - N/A.

54. I don't know.

55. Unknown. I don't know.

s/Miles Gilmore
MILES GILMORE

Subscribed and sworn to before me this 27th day of June, 1966.

s/Don Lockett Young
NOTARY PUBLIC, D.C.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004
EXecutive 3-3900

CERTIFICATE OF SERVICE

Copy of foregoing Answers to Interrogatories mailed, postage prepaid, to Law Offices, Hogan & Hartson, Attorneys for Defendant, 815 Connecticut Avenue, N.W., Washington, D.C. this 27th day of June. 1966.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs

SALLY S. POLE
COURT REPORTER
MUTUAL BUILDING
RICHMOND, VIRGINIA 23219

1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, ET AL.,
As Administrator of Estate of
HECTOR CHARLES HUNTER, Deceased — Plaintiffs

v.

CENTER MOTORS, INCORPORATED
a corporation — Defendant

CIVIL ACTION NO. 727-66

The deposition of JULIAN U. PUGH, taken by the defendant on oral examination, before Sally S. Pole, Notary Public for the State of Virginia at Large, on the 21st day of February 1967, beginning at two o'clock p.m., at the law offices of Christian, Barton, Parker, Epps & Brent, 500 Mutual Building, 909 East Main Street, Richmond, Virginia, pursuant to notice heretofore filed in this proceeding.

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(62)

45. Auto was taken for inspection March 27, 1964 but was rejected for numerous mechanical defects. Auto was finally taken for inspection twice on April 8, 1964 and was issued approved sticker the second time on April 8, 1964.

46. Repairs to be performed: Steering alighment defective, auxiliary brakes defective, brake equilization defective, directional signal defective, rear lights defective, steering operation defective including king pins, ball joints, worm & sector, tie rod ends, drag link, control arms, shock absorbers, springs & shackles, axles, wheel bearings, realighment. Taken to Center Motors for corrections March 27, 1964 and April 8, 1964.

47. I don't know.

48. N/A.

49. Unknown.

50. Unknown.

51. No.

52. N/A.

53. Unknown - N/A.

54. I don't know.

55. Unknown. I don't know.

s/Miles Gilmore
MILES GILMORE

Subscribed and sworn to before me this 27th day of June, 1966.

s/Don Lockett Young
NOTARY PUBLIC, D.C.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004
EXecutive 3-3900

CERTIFICATE OF SERVICE

Copy of foregoing Answers to Interrogatories mailed, postage prepaid, to Law Offices, Hogan & Hartson, Attorneys for Defendant, 815 Connecticut Avenue, N.W., Washington, D.C. this 27th day of June. 1966.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs

SALLY S. POLE
COURT REPORTER
MUTUAL BUILDING
RICHMOND, VIRGINIA 23219

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, ET AL.,
As Administrator of Estate of
HECTOR CHARLES HUNTER, Deceased — Plaintiffs

v.

CENTER MOTORS, INCORPORATED
a corporation — Defendant

CIVIL ACTION NO. 727-66

The deposition of JULIAN U. PUGH, taken by the defendant on oral examination, before Sally S. Pole, Notary Public for the State of Virginia at Large, on the 21st day of February 1967, beginning at two o'clock p.m., at the law offices of Christian, Barton, Parker, Epps & Brent, 500 Mutual Building, 909 East Main Street, Richmond, Virginia, pursuant to notice heretofore filed in this proceeding.

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APPEARANCES:

MR. FRANK F. ROBERSON
Hogan & Hartson
Attorneys at Law
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

Counsel for defendant,
Center Motors, Incorporated

NO APPEARANCES ON BEHALF OF PLAINTIFFS

DEFENDANT'S EXHIBITS FOR IDENTIFICATION:

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MR. ROBERSON: I would like to make a statement for the record. My name is Frank Roberson and I represent the defendant in this action.

I want to state that the deposition notice in this case was mailed to counsel for the plaintiff, Mr. Clement Theodore Cooper, on February 13, 1967, and that on Friday afternoon, February 18, 1967, Mr. Cooper called me and stated he had a previous engagement and wondered if I could postpone the deposition. I told him that arrangements had already been made for the attendance of Officer Pugh and for a Mr. Minson, a witness, and for the use of a deposition room; that it would be very awkward to change the date but that I would take the depositions early in the morning or late in the afternoon, if that would accommodate him.

He said that if he did not appear at the time scheduled for the deposition, namely, one forty-five p.m., Tuesday,

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February 21, 1967, to just go ahead without him and he would order a copy of the depositions.

I urged him to have someone present to cross-examine and suggested his associate or some lawyer in Richmond. He stated that he knew some lawyers in Richmond but was undecided whether to make arrangements to have anyone appear and cross-examine. He again told me if he did not appear just to go ahead without him.

It is now two o'clock p.m., and we have waited fifteen minutes with no word from Mr. Cooper or any representative of his. Accordingly, we will proceed with the deposition and I will ask the reporter to send Mr. Cooper a notice that the deposition has been filed, when it is filed, and he can then either look at the official court copy of the transcript or can order an extra copy from the reporter.

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JULIAN U. PUGH, after having been duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. ROBERSON:

Q. Mr. Pugh, will you state your full name?

A. Trooper Julian U. Pugh.

Q. What is your residence address?

A. Route 2, Box 114-F, Ashland, Virginia.

Q. Is that your business address also?

A. That is my home address.

Q. What is your business address?

A. Box 9108 Bellview Station, Richmond, Virginia.

Q. What is your occupation?

A. State Trooper.

Q. How long have you been a State Trooper?

A. Going on nine years.

Q. Did there come a time, Mr. Pugh, when you had occasion to investigate an accident that occurred

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on Interstate Highway 95 on March 22, 1965?

A. Yes, sir.

Q. Did you investigate that accident alone or did you have a partner?

A. I investigated the accident by myself. Another Trooper took the pictures.

Q. How did you first learn of the accident?

A. I received a call on the radio from First Division Headquarters.

Q. What time did you receive this call on the radio?

A. Approximately 6:50 a.m.

Q. On the date I mentioned -- March 22, 1965?

A. Yes, sir.

Q. Where were you physically located then with respect to where the accident had occurred, if you remember?

A. I was within four miles. I was at First Division Headquarters on Route 1 North of Richmond.

Q. Please tell us, as precisely as you can, the place of the accident.

A. Approximately three miles North of Richmond in Henrico County, approximately one-tenth of a mile North of the Dover Avenue exit northbound.

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Q. On what highway?

A. Interstate 95.

Q. At the point of this accident how many northbound lanes are there for traffic?

A. Three.

Q. Is this a dual lane highway?

A. Yes, sir.

Q. Officer, do you have any photographs showing the approach to the scene of the accident?

A. Yes, sir.

Q. Look at that first photograph and tell me how many northbound concrete lanes there are?

A. Three northbound concrete lanes, plus a blacktop shoulder.

Q. Isn't there a fourth lane and then a blacktop?

A. The part you see there is the on-bound ramp, coming on at Dover.

Q. So there are three concrete northbound lanes and then what appears to be a four[th] northbound lane, but really is the approach to the northbound lanes from the Dover interchange?

A. Yes, sir.

Q. Still further to the [r]ight of the north-

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bound motorist, there is what sort of surface?

A. Blacktop shoulder.

Q. Approximately how wide is that shoulder, with respect to a car?

A. I would say it is approximately ten feet wide.

Q. Can you tell us, Mr. Pugh, what you saw when you arrived at the scene of the accident?

A. When I arrived at the scene of the accident, there was a car down over the bank on the east side of the road. At that time it was lying on the right side.

Q. Did you later ascertain what make of car it was and any identification of it, sir?

A. Yes, sir -- a '58 Ford two-door hardtop, bearing 1965 District of Columbia license No. 6H455.

Q. Did you ascertain who the driver of that car had been?

A. Yes, sir.

Q. What was his name?

A. Hector (no middle name) Hunter.

Q. And did you ascertain his address?

A. 1636 Vermont Avenue, N. W., Washington, D. C., colored, male, thirty-three years of age.

Q. Had there been any other occupants of that

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car, did your investigation disclose?

A. Yes, sir.

Q. Would you give us a rundown, Officer Pugh, of the people in that car, their ages, if you were able to ascertain them, and the addresses such as you got from them?

A. The driver, Hector Hunter. Also, there was --

Q. Excuse me. How did you know which one of the occupants was the driver?

A. The driver was pinned under the steering wheel on the left side. His left foot had gone down through the floorboard beside the motor and he was pinned in that position.

Q. Was he the only adult man in the automobile? The only fully grown man?

A. I believe he was.

Q. I will ask you to go ahead and give me the names, addresses and ages of the other occupants of this car, as disclosed by your investigation.

A. Annie Laurel Hunter, 927 P Street, N. W., Washington, D. C., age thirty, female, colored. Multiple internal injuries.

Q. Do not tell us about that as yet, except

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with respect to those who were killed in the accident.

Was Mr. Hunter, the driver, dead when you arrived?

A. Yes, sir.

Q. How about Mrs. Hunter that was next to him?

A. Multiple internal injuries and she was killed.

Q. All right. Who was the third occupant of the car?

A. Mary Lois Gilmore, 927 P Street, N. W., Washington, D. C., age twenty-two, female, colored. Multiple internal injuries, lacerations about the head. She was also killed.

Another occupant was Janice Ann Hunter, 927 P. Street, N. W., Washington, D. C., age six, female, colored. Multiple internal injuries and lacerations about the face. Subject was killed.

Bernard (no middle name) Armstrong, 927 P Street, N. W., Washington, D. C., age one, male, colored. Multiple internal injuries, lacerations on the lip. This subject was killed.

Lisa (middle name unknown) Gilmore, 927 P Street, N. W., Washington, D. C., age two, female, colored.

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Possible head injury. She was not killed.

Louise (middle name unknown) Gilmore, 927 P Street, N. W., Washington, D. C., age three, female, colored. Both legs broken, fractured facial bone, laceration on the lip. She was not killed.

Anthony (no middle name) Hunter, 927 P Street, N. W., Washington, D. C., age two, male, colored. Fractured left arm, fractured skull. Subject was not killed.

Ray Hunter, 927 P Street, N. W., Washington, D. C., age five, male, colored. Internal injuries. Subject was not killed.

Peggy Ruth Armstrong, 927 P Street, N. W., Washington, D. C., age seventeen, female, colored. Internal injuries and lacerations about the face. Subject was not killed.

Elmer Lee Armstrong, Box 559 Coats, North Carolina, age nineteen, male, colored. Lacerations about the face, facial bone broken. Subject was not killed.

Q. Mr. Pugh, you have listed eleven people as being occupants of this wrecked automobile. What is the usual seating capacity of a 1958 two-door hardtop vehicle?

A. Six.

Q. Were you able, from your investigation,

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to determine where the automobile had left the hard surface of the road?

A. Yes, sir.

Q. How could you ascertain that?

A. From tracks leading back from where the car came to rest, back towards the road.

Q. Did you measure from where it left the hard surface to the place where the car ultimately came to rest?

A. Yes, sir.

Q. What was that distance?

A. One hundred and seventy feet.

Q. What is the terrain like it traversed during that one hundred and seventy feet?

A. It goes off to the right very level -- fairly level -- and then it drops off to the right rather abruptly next to the tree the car struck.

Q. Approximately what was the diameter of the tree the car struck?

A. I will say it was at least a foot and a half.

Q. Is there a stream nearby?

A. Yes, sir.

Q. Where is that with respect to the tree

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and the highway?

A. Just east of the tree or at the bottom of the tree.

Q. And the tree itself is to the east of the highway?

A. Yes, sir.

Q. Interstate 95 is a dual lane highway, is it?

A. Yes, sir.

Q. It is a dual highway, that is?

A. Yes.

Q. There are three northbound lanes and I suppose an equal number of southbound lanes, that correct?

A. That is correct.

Q. Is there a dividing strip in between?

A. A median strip, yes, sir.

MR. ROBERSON: I will ask the reporter to mark as Defendant's Exhibits for Identification, with Officer Pugh's position, these photographs Nos. 1 through 8.

NOTE: The photographs were marked Defendant's Exhibits Nos. 1 through 8 for Identification, and are filed with the

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ments of official police photographs?

A. Yes, sir.

Q. And do they accurately portray what you saw there that morning?

A. Yes, sir.

Q. Did you get the names of any outside witnesses that claimed to have seen the accident?

A. Yes, sir.

Q. What names did you get?

A. Louis E. Minson.

Q. Did you say Louis?

A. L-o-u-i-s.

Q. What is his address?

A. 1011 West Grace Street, Richmond, Virginia.

Q. Did you see Mr. Minson at the scene of the accident?

A. Yes, sir.

Q. Can you describe generally what he looked like?

A. He was a heavy-set fellow.

Q. Could you estimate his age, roughly?

A. I would say forty to forty-five.

Q. Did you talk to him at the scene of the

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accident?

A. Yes, sir, I did.

Q. Did you attempt to find out if there were any other witnesses that claimed to have seen the accident?

A. Yes, sir.

Q. Were you successful in finding any?

A. No, sir.

Q. Was there any survivor of this accident that had been in the car that you were able to get any statement from concerning the accident?

A. Yes, sir.

Q. How many of them did you talk with?

A. One.

Q. Which one was that?

A. Elmer Lee Armstrong.

Q. That is the nineteen-year old boy?

A. Yes, sir.

Q. Why did you not talk to the others?

A. The others were young and the older ones were in no condition to talk.

Q. When was it you talked to Elmer Lee Armstrong?

A. March 26, 1965.

Q. Where did you talk to him?

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A. St. Philip's Hospital in Richmond.

Q. How did you know what hospital it was?

A. I went to St. Philip's Hospital.

Q. You knew where the people had been taken?

A. Yes, sir.

Q. How did you find Mr. Armstrong at the time you saw him -- in what physical condition?

A. His face was swollen up. He appeared to recognize me -- I was in uniform -- as being a State Trooper. He gave me his birth date without any trouble and also his home address.

Q. What did he say was his age and his home address?

A. Born November 20, 1946, and his address was Box 559, Coats, North Carolina.

Q. And you did find out from other sources that that was where he lived, or did you verify this information?

A. No, I didn't verify that.

Q. In any event, did he talk responsively when you asked him questions?

A. Yes, sir.

Q. Did you keep any notes on what he told you that day?

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A. Yes, sir.

Q. Do you have those notes with you?

A. Yes, sir.

Q. Read for the benefit of the court and the jury who will hear this case just exactly what Elmer Lee Armstrong told you when you saw him that day some several days after the accident?

A. Uncle Hector Hunter was driving, Hector's wife was in the center front, and he was on the right side next to the door. Mary Lois was in the back on the right side. Louise Gilmore was sitting on his lap and Annie's little baby on her lap. Its name was Anthony. He stated he was asleep and he didn't know what happened.

Q. You mean he stated that he, Elmer Lee Armstrong, was asleep?

A. Yes, sir. He further stated that everybody was asleep as far as he knew. He stated he didn't know anything until Tuesday.

Q. Do you happen to know the day of the week the accident occurred on?

A. On a Monday.

Q. Early Monday morning?

A. Yes, sir.

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Q. Did you inquire of him where they had come from and where they were going and what time they left?

A. I have no notes on it, but I think I talked to him about that.

Q. What is your recollection of what he told you?

A. He told me they were coming from North Carolina.

Q. That is the only detail you recall about it?

A. Yes, sir.

Q. Did he tell you anything about any conversation with the driver of the car at the time or shortly before it went off the road and hit the tree?

A. No, sir.

Q. I am reading from page 14 of the deposition of Elmer Lee Armstrong taken in this case on September 12, 1966 -- (reading) --

"Q. Tell me what happened?

"A. Well, we passed this car, we passed him and came back on our side of the road. Hector looked at me and he said, "Elmer, the steering is locked and I can't straighten this thing up." And I said, "Jam on the

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brakes. Jam on the brakes," and he mashed the brakes and it had no brakes. It had no brakes, and that's all I remember. That is all I remember."

Q. (Continuing) Did Mr. Armstrong, when you talked to him in the hospital, tell you that in substance or anything in that line at all?

A. No, sir. What I have stated is what he told me -- all he told me.

Q. He told you he was asleep and didn't know what happened?

A. Yes, sir.

Q. Did you yourself make any mechanical inspection of the car?

A. As far as checking the brakes and lights and steering, I couldn't do this.

Q. Why couldn't you do it?

A. It was damaged too bad. Both of the rear tires were slick.

Q. What was the weather and the roadway like on the date of this accident?

A. The road was dry. It was daylight; open country; clear weather. It is a concrete road and it is

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straight and level; no defects; traffic lanes are marked.

Q. So far as you know, Officer, there are no known witnesses, outside witnesses to this accident, other than this Mr. Minson you previously mentioned?

A. That's all I know of.

Q. Officer Pugh, one other question. Do you have any close-up photograph that shows the base of the tree that was struck by the car?

A. Yes, sir.

MR. ROBERSON: Would the reporter please mark that as Defendant's Exhibit No. 9 for Identification?

NOTE: The photograph was marked Defendant's Exhibit No. 9 for Identification, and is filed with the original of this transcript.

Q. (By Mr. Roberson) Looking at Defendant's Exhibit No. 9 for Identification, that is another of the police photographs?

A. Yes, sir.

Q. This is not an enlargement?

A. No, sir.

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Q. And in that distance it drops eight to ten feet?

A. Yes, sir.

Q. Do you waive the reading and signing of this deposition?

A. Yes, sir.

MR. ROBERSON: This is agreeable with me. Thank you very much, Officer. I have no further questions.

FURTHER THIS DEPONENT SAITH NOT

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STATE OF VIRGINIA

CITY OF RICHMOND, TO-WIT:

I, Sally S. Pole, Notary Public for the State of Virginia at Large, do hereby certify that the foregoing is a true and correct transcript of the deposition of the witness, JULIAN U. PUGH, taken by and before me at the time and place stated in the caption thereto, the reading and signing of the deposition by the witness being waived by the witness and counsel present.

I further certify that I am neither counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any of counsel in the case, or financially interested in the outcome.

Witness my hand and seal this 27th day of February, 1967.

My commission expires October 27, 1969.

(Signed) Sally S. Pole
Notary Public

(SEAL)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, ET AL.,
As Administrator of the Estate of
HECTOR CHARLES HUNTER, Deceased — Plaintiffs

v.

CENTER MOTORS, INCORPORATED
a corporation — Defendant

CIVIL ACTION NO. 727-66

The deposition of LOUIS EDWARD MINSON taken by the defendant on oral examination, before Sally S. Pole, Notary Public for the State of Virginia at Large, on the 21st day of February 1967, beginning at two forty-five (2:45) o'clock p.m., at the law offices of Christian, Barton, Parker, Epps & Brent, 500 Mutual Building, 909 East Main Street, Richmond, Virginia, pursuant to notice heretofore filed in this proceeding.

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APPEARANCES:

MR. FRANK F. ROBERSON
Hogan & Hartson
Attorneys at Law
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

Counsel for defendant,
Center Motors, Incorporated

NO APPEARANCES ON BEHALF OF PLAINTIFFS

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

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MR. ROBERSON: I would like to make a statement, that although this deposition was scheduled for 2:15 p.m., February 21, 1967, and it is now 2:45 p.m., there has been no word from Mr. Cooper, plaintiffs' attorney, and no one has appeared as his representative. Accordingly, we will proceed with Mr. Minson's deposition.

LOUIS EDWARD MINSON, after having been duly sworn, deposed and said as follows:

DIRECT EXAMINATION

BY MR. ROBERSON:

Q. Will you state your full name?

A. Louis Edward Minson.

Q. What is your residence address?

A. 1011 West Grace Street, Richmond, Virginia.

Q. What is your occupation?

A. Carpenter.

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Q. How long have you been a carpenter?

A. Well, off and on all my life. I was a truck driver for about seventeen years.

Q. Mr. Minson, did you witness an accident on March 22, 1965 on Interstate Highway 95 just north of Richmond?

A. I did.

Q. By whom were you employed at that time?

A. C. W. Wright.

Q. Is that a construction company?

A. Yes.

Q. Do you still work for them?

A. No.

Q. What is your phone number at your home address?

A. I don't have one.

Q. If I should want to reach you, how would I go about it?

A. You would have to get in touch with me at home.

Q. I would have to write to you?

A. Yes, or one of the agents come by and notify me.

Q. This accident that you witnessed

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occurred about what time?

A. It was between six and seven.

Q. A. M. or P. M.?

A. A. M.

Q. Where were you coming from and where were you going?

A. I was coming from Belvidere and Broad and going to Elmont to work.

Q. What time were you due at work?

A. Seven o'clock.

Q. And that is about how far from where the accident occurred?

A. Approximately seven miles.

Q. What kind of vehicle were you riding in?

A. Chevrolet stake-body truck, with a house on the back of it.

Q. Were you driving?

A. No.

Q. Where were you seated in the car?

A. Righthand side of the car.

Q. What first called your attention to the automobile that later was in a wreck?

A. Well, when I first noticed he came by us and crossed the road.

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Q. You were headed in which direction?

A. North -- the same as he was.

Q. The other car was going north also?

A. Yes.

Q. How many lanes are there for northbound traffic at that point?

A. Three lanes -- three or four. I am not for certain. I don't know. I know it is either three or four lanes.

Q. Which lane were you proceeding in?

A. I was in the middle lane when he passed me.

Q. Passed you on which side?

A. On the lefthand side.

Q. What directed your attention to this car?

A. By it not straightening up. He kept straight across the road.

Q. Did it pass close enough to you that you could see any of the occupants of the car as it passed you?

A. Oh, yes.

Q. Was it daylight?

A. Daylight.

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Q. Was the weather clear?

A. Clear.

Q. When you saw this car crossing over, had it already passed you or was it in the process of passing you?

A. When I first noticed it, it was in the process of passing.

Q. What did you see when you looked at it?

A. One man asleep and the car was crowded.

Q. By crowded you mean a lot of people were in it?

A. A lot of people in it.

Q. Where was the man seated you thought was asleep?

A. The one I first saw asleep was on the righthand side of the car that had the accident.

Q. In the front or back?

A. Front.

Q. Was he the passenger closest to the right door on the front?

A. Yes.

Q. What made you think he was asleep?

A. He had his head laying over like that (demonstrating), and had his eyes closed.

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Q. Could you see his eyes?

A. It was close enough to me I could see it, yes.

Q. You are indicating his head was leaning over towards his right shoulder?

A. Yes.

Q. Could you see the driver?

A. Yes, I seen him.

Q. What, if anything, did you observe with respect to the driver?

A. When I noticed him asleep, I noticed the driver leaning forward over the wheel, like this (demonstrating).

Q. About a foot? Leaning forward about a foot?

A. Yes -- like sometimes you rest your back when you are driving and lean over like that (demonstrating). His head was bobbing.

Q. Bobbing in which direction?

A. Like that (demonstrating).

Q. Backwards and forwards?

A. Yes.

Q. In what direction was the car going when you observed the driver doing this?

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A. He had pulled across then on the line, and I could see through his back glass, is where I got the view of him.

Q. Were they headed north or in which direction at that time?

A. They was heading across the highway in front of us.

Q. In which direction?

A. To the right.

Q. Approximately what distance were you from him when you observed that he was going across the road?

A. We were directly beside him. When he crossed over the road we was practically right beside him because we had our speed, going on too.

Q. About how fast would you say your truck was going at that time?

A. Anywhere from thirty-five to forty.

Q. Did you make any estimate of how fast the other car was going when it passed you?

A. Wasn't going fast enough to pass too fast in front of us -- going approximately the same speed we were going.

Q. It must have been going a little faster

if he passed you.

A. A little bit faster than us.

Q. Did the speed of that car you saw change, either increase or decrease, from then until the time the accident happened?

A. No. It just went on across the road and over the bank -- boom. It ended up at the bottom of the hill between two trees.

Q. Did it hit a tree?

A. Yes, it did.

Q. Can you describe the approximate size of the tree it hit?

A. Well, I would say the larger tree was around eighteen inches in diameter.

Q. I show you a photograph that was Exhibit No. 3 with State Trooper Pugh's testimony in his deposition. Can you pick out the tree in there that the car ran into?

A. Yes, this big tree here (indicating on photograph).

Q. You are indicating -- ?

A. The one on the left -- on the closest side of the road.

Q. Is there a man standing at the base of that tree in the picture?

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A. It seems like it is.

Q. And is he wearing a black hat?

A. Yes, he's wearing a black hat.

Q. Do you see any tire marks in the photograph?

A. Oh, yes.

Q. Is that the general line of the travel of this automobile after it passed you?

A. That's exactly it.

Q. Did you later on look at the tire marks after you got out of the truck?

A. After I went down to help the people out of the car.

Q. Could you tell whether or not the brakes had been applied?

A. I know they wasn't.

Q. How do you know?

A. Because the light didn't come on -- never touched his brakes.

Q. What did you do when you saw the car go down that bank to that tree?

A. I pulled right over here (indicating on photograph) to where these people are, and parked -- I didn't, but the driver did.

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Q. Do you know where the driver of your truck is now?

A. No, I don't.

Q. Do you remember his name?

A. No, I can't remember his name either. I called Mr. Wright's office -- Mr. C. W. Wright is dead -- but I called his office and never could find where he is at.

Q. He was just a temporary worker?

A. Yes.

Q. What did you do after you got out of your truck?

A. Went down to see if I could give any help to the people. Then it started to blaze and I ran back up and got a fire extinguisher.

Q. What started to blaze?

A. The hot exhaust ignited, I imagine. I don't recall just where the fire was.

Q. How was the car resting when you got to it?

A. Kind of on the right side, impacted between two trees.

Q. What did you do when you got there? You said you saw it was on fire and got a fire extinguisher. Where did you get that?

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A. From a tractor-trailer driver on the side of the road.

Q. Do you know of any witnesses to this accident, other than yourself?

A. I am the only one I know of.

Q. Did you give your name to the investigating police?

A. Oh, yes.

Q. How long was it after the accident before the investigating police came?

A. It wasn't but a few minutes.

Q. What does "a few minutes" mean to you? About how long is that?

A. Within twenty minutes, I would say. Inside of twenty minutes there was somebody there.

Q. You saw the Officer who testified here earlier this afternoon?

A. Yes.

Q. Do you recognize him as being the Officer who arrived?

A. Yes.

Q. Was he the first policeman that arrived at the scene of the accident?

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A. About seven or eight of them came to the rescue, but as far as I know he was the first.

Q. This Officer Pugh, the one that was here this afternoon, was the one you gave your name to?

A. I believe it is. It has been so long.

Q. Mr. Minson, after this car passed you and headed off the road, did it swerve in any way?

A. No, sir.

Q. And the brake lights never came on?

A. Never came on.

Q. Was there anything to indicate to you he ever woke up until he hit the tree?

A. It didn't appear to me he ever woke up. It wasn't no lights indicating the brakes was applied and you could hear the crash and see it at the same time.

Q. Mr. Minson, do you have any interest in the outcome of this lawsuit one way or the other?

A. No, sir.

Q. You didn't know any of the occupants of the car?

A. No, sir.

Q. You didn't know the defendant or anybody connected with it, namely, Center Motors of Washington, D. C.?

A. Never heard of them.

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Q. You just appeared here to tell what you know about the accident?

A. Yes, sir.

Q. Have you related everything you can recall about the accident?

A. It has been so long ago. I tried to tell you exactly like it did happen.

Q. You recall no additional details?

A. No, sir.

Q. Do you waive the reading and signing of this deposition?

A. Yes, I will waive it. I don't need to sign it.

MR. ROBERSON: That is agreeable with counsel. I have no further questions.

FURTHER THIS DEPONENT SAITH NOT.

- -

SALLY S. POLE
COURT REPORTER
MUTUAL BUILDING
RICHMOND, VIRGINIA 23219

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STATE OF VIRGINIA

CITY OF RICHMOND, TO-WIT:

I, Sally S. Pole, Notary Public for the State of Virginia at Large, do hereby certify that the foregoing is a true and correct transcript of the deposition of the witness, LOUIS EDWARD MINSON, taken by and before me at the time and place stated in the caption thereto, the reading and signing of the deposition by the witness being waived by the witness and counsel present.

I further certify that I am neither counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any of counsel in the case, or financially interested in the outcome.

Witness my hand and seal this 27th day of February, 1967.

My commission expires October 27, 1969.

(Signed) Sally S. Pole
Notary Public

(SEAL)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. As Administrator of Estate of HECTOR CHARLES HUNTER, Deceased Plaintiffs v. CENTER MOTORS, INCORPORATED a corporation Defendant	)	Civil Action No. 727-66

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 9(h) of this Court, the defendant moves the Court for summary judgment in its favor upon the ground that the material facts as to which there is no genuine issue show that it is entitled to judgment as a matter of law, as more fully appears from the statement of material facts and the pleadings on file herein.

Respectfully submitted,

HOGAN & HARTSON

By _____
Frank P. Robertson

CARL L. TAYLOR

By _____
Carl L. Taylor

Attorneys for Defendant
815 Connecticut Avenue
Washington, D.C. 20006
293-5500

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CERTIFICATE OF SERVICE

A copy of the foregoing motion for summary judgment, together with the attached statement of material facts and memorandum of points and authorities, was mailed, postage prepaid, this 10th day of April, 1967, to Clement Theodore Cooper, Esq., Counsel for Plaintiffs, 918 F Street, N.W. (302), Washington, D.C. 20004.

HOGAN & HARTSON

CARL L. TAYLOR

By _____
Carl L.Taylor
Attorneys for Defendant

(10)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. As Administrator of Estate of HECTOR CHARLES HUNTER, Deceased Plaintiffs	)	
v.	)	Civil Action No. 727-66
CENTER MOTORS, INCORPORATED a corporation Defendant	)	

DEFENDANT'S STATEMENT OF
MATERIAL FACTS NOT IN DISPUTE

Pursuant to Rule 9(h) of the Rules of this Court, defendant sets forth herein the material facts which it contends are not in dispute.

1. Hector Hunter purchased a used 1953 Ford from the defendant on January 20, 1964, and took delivery of it on that date. [Car Order and Bill of Sale (hereafter called "Contract") and Used Vehicle Guarantee (hereafter called "Warranty") attached to the Requests to Plaintiffs Thomas S. Hunter, Hallie Mae Armstrong, and Miles Gilmore for Admissions (hereafter called "Admissions").]

2. The Contract provided that the automobile was sold "As Is" except for the written Warranty, which provided that the defendant would pay 50% of the cost of any necessary repairs for a period of 30 days including all repairs necessary to enable the car to pass either the District of Columbia or Virginia inspection. The Warranty, which was signed by Hector Hunter, stated that "No other guarantees, representations, or agreements, expressed or implied, have been made to the buyer."

3. The automobile was inspected and approved by the District of Columbia on April 8, 1964. [Answers of Thomas Hunter to Interrogatories, here-

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after referred to as "Hunter Int.," no. 49; Answers of Miles Gilmore to Interrogatories, hereafter referred to as "Gilmore Int.," no. 45.]

4. Hector Hunter relinquished possession of the automobile on or about December 12, 1964. [Hunter Int., no. 46.]

5. Hector Hunter reassumed possession of the automobile on or about January 5, 1965. [Admissions, para. 2.]

6. On March 22, 1965, the automobile, while being driven by Hector Hunter, left the road and collided with a tree. [Complaint, para. 6.] Of the eleven occupants of the automobile, five were killed, including the driver, and six were injured. [Complaint, paras. 6, 17, 19, 21, 23, 25, 27, 29, 31, 33, & 35.]

Respectfully submitted,

HOGAN & HARTSON

By _____
Frank F. Roberson

By _____
Carl L. Taylor

Attorneys for Defendant
815 Connecticut Avenue
Washington, D.C. 20006
293-5500

(103)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. As Administrator of Estate of HECTOR CHARLES HUNTER, Deceased Plaintiffs v. CENTER MOTORS, INCORPORATED a corporation Defendant	)	Civil Action No. 727-66

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs have alleged that the cause of the accident was a mechanical failure in the automobile [Complaint, para. 6]. They have further alleged that the failure is attributable to the defendant [Complaint, para. 7].

Cause of the Accident

The only testimony that the accident was caused by mechanical failure comes from Elmer Armstrong, a passenger who survived. Of the other five surviving passengers, one was asleep [Peggy Armstrong Dep., pp. 16&18], and four were children between the ages of two and five [Pugh Dep., pp. 10-11]. The car itself was demolished so that examination was impossible [Pugh Dep., p. 23]. Elmer Armstrong's current account of the accident is contained in his deposition, where he testified that Hector Hunter, the driver, turned to him and said "the steering is locked, I can't move the steering wheel;" Armstrong said he then told Hunter to "jam on the brakes," whereupon Hunter "slammed on the brakes and he had no brakes" [p. 17].

This testimony is legally insufficient to establish that the accident was caused by mechanical failure rather than by human error.

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In Washington, Marlboro and Annapolis Motor Lines, Inc. v. Maske, 89 U.S.App.D.C. 36, 190 F.2d 621, cert. denied, 342 U.S. 834, rehearing denied, 342 U.S. 895 (1951), the plaintiff, a passenger in one of defendant's buses, had sought to prove negligence solely by her own testimony as to how the sudden stop had occurred in which she was injured. In addition to being uncorroborated, and controverted by other witnesses, her testimony was refuted by her previous contradictory statement to her doctor, although she denied making the statement. The Court concluded "particularly in view of her previous contradictory statement," that the verdict lacked "substantial support" and that defendant's motion for a directed verdict should have been granted. 89 U.S.App.D.C. at 37, 190 F.2d at 622.

In the present case, Elmer Armstrong's testimony is uncorroborated. Further, it is controverted by the testimony of a disinterested witness, Louis Minson, who was a passenger in a truck that Hector Hunter's automobile had overtaken and passed just before the accident. Mr. Minson testified at his deposition that as the automobile was passing he noticed that the male passenger in the right front seat had his eyes closed and his head inclined as if asleep.[pp. 7-8].* Mr. Minson also noticed that the driver was leaning forward over the wheel and his head was bobbing as if he, too, were dozing [pp. 8-9]. As the automobile traversed the three-lane northbound highway in front of the truck and proceeded 170 feet [Pugh Dep., p. 12] down the shoulder and over the bank at the side, Mr. Minson continued to watch it and saw that the automobile's brake lights never came on [Minson Dep., p. 11]. Finally, Elmer Armstrong's present account is irreconcilable with his statement several days after the accident to Trooper Julian Pugh of the Virginia State Police. He told Trooper Pugh that he had been asleep at the time and did not know what happened [Pugh Dep., p. 21].

---

* Elmer Armstrong was seated in the front seat on the right hand side [Elmer Armstrong Dep., p. 10]; indeed, he was the only male passenger in the automobile, aside from the driver, over the age of five [Pugh Dep., pp. 9-11].

In Meeke, supra, the error was in the denial of defendant's motion for a directed verdict. But Meeke is equally applicable to a motion for summary judgment; if a directed verdict would be required, summary judgment is justified. Dewey v. Clarke, 86 U.S.App.D.C. 137, 143, 180 F.2d 766, 772 (1950).

Cause of the Mechanical Failure

Plaintiffs' allegations and admissions show that any mechanical failure which occurred, if it did occur, cannot be attributed to the defendant.

The allegations and admissions may be briefly summarized. Hector Hunter purchased a six-year old automobile and drove it away on January 20, 1964 [Contract and Warranty]. The first date upon which plaintiffs indicate evidence of mechanical difficulties is March 27, 1964, when the vehicle alleged was inspected by the District of Columbia and rejected because of various problems including some connected with the steering and brakes. [Hunter Int., no. 49; Gilmore Int., nos. 45 & 46]. Presumably Hector Hunter drove the car during the two-month period between purchase and first inspection. Plaintiffs allege that the car was twice taken to Center Motors for repairs, after which it was inspected and approved by the District of Columbia on April 8, 1964 [Hunter Int., no. 49; Gilmore Int., nos. 45 & 46]. Plaintiffs apparently contend that the difficulties with the car persisted, despite its approval by the District of Columbia Department of Motor Vehicles, and that Hector Hunter on numerous occasions so notified the defendant [Complaint, para. 14]. Evidently Hector Hunter continued to drive his automobile in its allegedly dangerous condition until December 12, 1964, at which time plaintiffs say he abandoned it at Center Motors, telling a salesman that it was a piece of junk and a hazard to himself and his family [Hunter Int., nos. 45 &

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46]. This, incidentally, is the only occasion on which the plaintiffs specifically allege that defendant was notified of any difficulty with the car after it had passed inspection [Hunter Int., no. 45; Gilmore Int., no. 42]. On January 5, 1965, Hector Hunter reassumed possession of his hazardous piece of junk [Admissions, para. 2], and eventually proceeded, 11 weeks later, to embark on a round trip journey to North Carolina during which the accident occurred. One of the adult survivors was a passenger on the way down to North Carolina. She has testified on deposition that they had no trouble with the car whatsoever on that part of the trip [Peggy Armstrong Dep., p. 17]. Indeed, Hector Hunter himself, upon arrival at his destination, remarked to those that greeted him that he had no trouble on the way down [Elmer Armstrong Dep., p. 17]. Nor was there any sign of difficulty on the way back prior to the accident [Peggy Armstrong Dep., p. 17; Elmer Armstrong Dep., p. 16]. The date of the accident, March 22, 1965, was 14 months after Hector Hunter first began to drive the car.

From the foregoing, defendant is entitled as a matter of law to summary judgment in its favor.

In Harward v. General Motors Corp., 235 N.C. 88, 68 S.E.2d 855 (1952), plaintiff testified that soon after he purchased a new automobile from one of the defendant's dealers he discovered there was excessive play or lost motion in the steering wheel, especially on left turns. He waited until the 500 mile inspection to report this condition to the dealer, and although he found that the condition had not been corrected, he continued to drive the car until the 1,000 mile inspection, when he again reported the condition without success. Being an expert mechanic himself, the plain-

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tiff was in a position to realize the full extent of the danger; nevertheless, he continued to use the car for nine months, until the accident which gave rise to this suit. The accident occurred while plaintiff was emerging from a curve. The car suddenly began "to shimmy just a little, something it had never done before." When plaintiff touched his brake something popped and the car went out of control, ran off the road, and turned over. The vehicle was examined both by plaintiff and by a mechanic hired by him; both concluded that the steering gear had locked and that this mechanical failure had caused the accident. Plaintiff further testified that the condition of looseness in the steering gear, which he first noticed before the 500 mile inspection, had continued up to the time of the accident. On these facts, the Court held:

> Whether the failure of the steering gear to fit as indicated by the plaintiff and his witness was due to natural wear or hard and fast driving or lack of lubrication is left in doubt. There is a complete absence of testimony that any cotter key or other essential part of the mechanism was left out, or that any improper parts were used. There is no substantial evidence that there was anything wrong with the steering equipment of the automobile at the time it was sold to the plaintiff, nor is there substantial evidence in the record which tends to prove that the condition in which the steering mechanism was found after the accident was due to any fault or negligence either of omission or of commission on the part of either of the defendants. [Citations omitted.]
>
> * * * Plaintiff's evidence at most raises a suspicion or a conjecture, but fails to establish actionable negligence or any causal relation between the condition of the automobile when it was purchased and the accident resulting in plaintiff's injury more than nine months later.

68 S.E.2d at 853. The Court affirmed the judgment of nonsuit which had been entered by the trial court at the close of plaintiff's case.

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In Tinnell v. Commercial Carriers, Inc., 383 S.W.2d 914 (Ky. 1964), plaintiff's son purchased a two-year old automobile from the defendant. He received a written warranty which covenanted that the automobile was in good running condition for normal use, and by which the defendant undertook to service or repair the car at a 50% discount on labor and 25% discount on parts for a period of 30 days or for 1,000 miles, whichever occurred first. The warranty specifically stated that it was in lieu of all others, either expressed or implied. Less than a month later, plaintiff's son took the automobile to defendant for adjustment of the brakes. Four months after purchase, while plaintiff was driving the car, he was forced to apply the brakes in an emergency, and found that "the front end locked and I just stopped." He told his son that he thought defendant had not fixed the brakes properly. Shortly thereafter his son had the automobile checked at a service station. The mechanic who examined the car told plaintiff's son that some of the parts were defective; but the latter did not ask that any repairs be made. The accident which was the subject of the suit occurred the following day. The sole survivor, a passenger, testified that while they had been driving on a highway the actions of another automobile forced plaintiff's son to apply the brakes suddenly, whereupon the car started sliding and turning, and collided with a truck. Plaintiff based his right of recovery on an earlier Kentucky case which had held that a dealer who undertakes to recondition used cars before resale owes to the public a duty to use reasonable care to discover defects and either to repair them or warn the buyer of their existence. The Court in Tinnell approved the earlier statement of law, but felt that there were several crucial factual differences between the two cases. In the earlier case, defective brakes had

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caused an accident immediately after purchase, before the buyer had full opportunity to become aware of the defect, and before a change in the condition of the vehicle could be expected from usage. The Court contrasted the earlier case with the facts in Tinnell:

> The facts of this case fail to qualify under the above rules on several counts. The accident happened about four months after the sale; the buyer, who was described in the evidence as being a good automobile mechanic himself, had full opportunity to become aware of the defect---and, in fact, did believe that something was wrong with the brakes. There was no showing that that he relied on the judgment of the seller. As was pointed out in Beardsley v. Breech, Ky., 310 S.W. 2d 539, and Arnor v. Hopkins, Ky., 275 S.W.2d 580, car dealers are not insurers for the continuing safety of automobiles which they have sold. * * *

303 S.W.2d at 916. The summary judgment granted by the trial court was affirmed. Perhaps influencing the Court's judgment was a suggestion in the evidence, noted at the end of the opinion, that plaintiff's son was forced to apply his brakes suddenly because he had been racing with the car that he was then trying to avoid.

Similarly, in O'Hara v. General Motors Corp., 35 F.Supp. 319 (E.D. Mich. 1940), plaintiff's decedent, while driving an automobile manufactured by the defendant and purchased three months previously, ran off the road and hit a tree. The car was demolished and he was killed. A surviving passenger testified that just before the car left the road plaintiff's decedent said "look out I can't hold her," and a pedestrian who witnessed the accident testified that he heard substantially the same thing. Plaintiff contended that the evidence that the car left the road coupled with the evidence that the driver had said that he could not steer the car constituted prima facie proof that a defect in the steering gear had caused the accident and that defendant was responsible for the defect. The Court, feeling that the driver's statement was ambiguous, ruled that it did not constitute proof

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that there had been a defect in the steering gear, but that even if the statement could reasonably be so construed, a directed verdict was necessary because there was no proof that the automobile had been properly maintained during the three months that plaintiff's decedent had owned it.

> It is my understanding that counsel for plaintiff contends that if plaintiff showed that the automobile was manufactured by the defendant and showed that one of the things which might possibly have caused the accident was a defective car, a verdict could not be directed for defendant at the close of plaintiff's case, but that the trial must go on and the burden of proof shifts to the defendant in such a way that if the defendant did not show his own freedom from negligence---in other words, that the automobile was free from defects---thenthe case must go to the jury. I know of no such Michigan law, and feel certain that there is no such law to be found. It would still leave the jury to guess. If plaintiff had introduced proof to eliminate all other causes except a defective car, it would then, of course, prevent a directed verdict and defendant would have the privilege of showing the care used by inspection or otherwise. That is quite a different situation than the case at bar, in which other possible causes of the accident have not been eliminated. Plaintiff's decedent had owned and driven the car for three months. There is nothing in the proof to eliminate defective brakes resulting from improper adjustment, flat tires, and many other things for which defendant would not be liable and concerning which defendant was in no better position to offer proof than was plaintiff.

35 F.Supp. at 321. The Court's opinion, written in response to a motion for a new trial, denied the motion and reaffirmed its previous action in directing a verdict for the defendant.

All three of the cases just discussed are quite similar to the present case. All three emphasize that changes in the mechanical condition of even a new automobile are to be expected from normal wear and tear or lack of proper maintenance. Even more are such changes to be expected in a used car, six years old at the time of purchase, as in the present case. That factor

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Hunter was able to drive this car for more than a year before the failure which allegedly occurred, reduces to the level of suspicion and conjecture the contention that the failure was due to defects at the time of sale rather than to normal wear and tear or lack of proper maintenance. The cases make clear that in order to raise the inference that an automobile was defective at the time it was purchased, plaintiffs must show as part of their case that the mechanical failure which caused the accident was not the result of wear and tear or lack of proper maintenance. Therefore, even if one indulges in the rather incredible assumption that this accident was caused by mechanical failure rather than by Hector Hunter's fatigue, defendant is nevertheless entitled to judgment as a matter of law.

Respectfully submitted,

HOGAN & HARTSON

By _____
Frank F. Roberson

By _____
Carl L. Taylor

Attorneys for Defendant
815 Connecticut Avenue
Washington, D.C. 20006
293-5300

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al. as Administrator of Estate of HECTOR CHARLES HUNTER, dec. et. al.	)	
Plaintiffs	)	
v.	)	Civil Action No. 727-66
CENTER MOTORS, INCORPORATED a corporation	)	
Defendant	)	

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiffs in the above captioned cause and opposes Defendant's Motion for Summary Judgment on the ground that there are genuine issues of material facts; that the above cause cannot be tried by way of Summary Judgment according to Defendant's Motion and Memorandum of Points and Authorities; Plaintiffs have never made admissions of any facts setforth in Defendant's Statement of Material Facts Not in Dispute but to the contrary; that the Doctrine of Strict Liability is applicable in this Cause and such doctrine overrides any documents which defendant uses in support of his argument on this Motion; that the cause now before the Court is strongly supported by the Uniform Commercial Code which renders all of defendants arguments on this Motion nugatory; that the plaintiffs are entitled to have their day in Court and that the genuine facts, continuously in dispute, must be proven at a Trial by Jury and not by Motion for Summary Judgment; Finally, the Discovery Processes under the Federal Rules of Civil Procedure are not to be used as a sword inorder to barricade meritorious claims before such claims reach a final determination by Jury but that the Process should be used to enable defendants to alert themselves of any defenses and facts in preparation of such defenses; For such other and further reasons as will be argued during the Hearing on this Motion.

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s/Clement Theodore Cooper

Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004
EXecutive 3-3900

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, et al as Administrator of Estate of HECTOR CHARLES HUNTER, dec.	)	
Plaintiffs	)	
vs.	)	Civil Action No. 727-66
CENTER MOTORS, INCOR. a corporation	)	
Defendant	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

At first blush, it must be pointed out here that the problem before the Bar of this Court relates to one accident (automobile) in which human lives were lost and critically impaired. During the wake of National Concern for Automobile Safety of Passengers and Pedestrians alike, this suit emerged as a result of an automobile accident which occurred on March 22, 1965. Factors of Causation inescapably relates back to February 3, 1964, the date on which the automobile in question was purchased. Plaintiffs filed their suit, setting forth sufficient material allegations and facts, which, as defendants' answer has it, are clearly in dispute. Now comes the Defendant, after discovery, and files this Motion to dismiss the complaint on the ground that there is no genuine issue of fact. This Honorable Court will find - much to the contrary - that there are numerous issues of fact in dispute. Consequently, Defendant's motion does not and should not attain.

Under Rule 56 of the Federal Rules of Civil Procedure, a Motion for Summary Judgment will attain where there are no genuine issues of material fact to be controverted. Such is not the case here. The question then, is whether plaintiffs have raised sufficient material facts upon which their cause might proceed to a trial on the merits. 1Under clear construction of Rule 56 of F.R.C.P., the defendant's motion is groundless for the reason that plaintiffs' allegations in their complaint and their contention of facts must

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be accepted as true, and they must be given the benefit of the most favorable inference which reasonably can be drawn therefrom. See Jeffrey v. Whitworth College, 128 F. Supp. 219 (1955). Courts have held, time and time again, that a Motion for Summary Judgment may not serve as a substitute for a trial of disputed issues of material facts. Yokem v. Griffith, 167 F. Supp 120 (1958).

Plaintiffs are not required to try their case before full hearing by depositions or by interrogatories. Clearly, plaintiffs have requested a trial by Jury on all issues and a fair and final determination can be made then and only then.

It appears from Defendant's Memorandum that the fact that the death 'trap' was purchased (used) as it, obviates duties owed to human life renders plaintiffs' suit null and void. Nothing is further from modern law of products liability. Without a discussion of Washington, Marlboro, & Annapolis Motor Lines, Inv. v. Maske, 89 U.S. App. D.C. 36, 190 F. 2d 621, plaintiffs contend that the above case is inapplicable on it's facts and law and is of no moment here.

As to the liability of Used Car Dealers, Court have held that such dealers are liable. Thus, in Jones v. Raney Chevrolet Co, 217 N.E. 693, 9 S.E. 2d 395 (1950), the Court held that the Defendant dealer had actual knowledge or should have had knowledge of the defective condition of the used automobile and was therefore liable. In Rawls v. Ziegler, 107 So. 2d. 601 (1958, Fla.), there is dictum to the effect that a supplier of an automobile with defective brakes is liable for injuries sustained in an accident resulting from such defective brakes, even though the negligence of the driver in continuing to operate the car on the public highway with knowledge of the defective brakes concurred in causing the accident. In Boos v. Claude, 69 S.D. 254, 9 N.W. 2d 262 (1943), plaintiffs purchased a used Terraplane automobile and while driving the same, the automobile went out of control. Plaintiff, before purchasing the used car, had made specific inquiry as to

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its condition and was told that there was nothing wrong with it. The Court held that the statements made by defendant amounted to an express warranty as to the condition of the car and that plaintiff was entitled to recover on the theory of the defendant's negligence in making the warranty. In Jones v. Raney Chevrolet Co., supra, that Court held that a seller of used automobiles was liable for injuries sustained by the driver as well as his invited guest where the dealer represented to the purchaser that the automobile was equipped with good, reliable brakes, when it knew, or by exercise of due care should have known, that the automobile had defective brakes. Neither does lack of privity bar recovery against a used car dealer. See Barnie v. Kutner, 45 Del. 550, 76 A. 2d 801 (1950). Finally, in Egan Chevrolet Co. v. Bruner, 102 F. 2d 373 (C.A. 8 Minn, 1939), that Court held that a dealer of used cars was liable for injuries to passengers in the car which collided with a truck sold by the dealer. The Court found that the Jury could find that the collision was due to the steering mechanism of the truck and that the steering mechanism was defective at the time the truck left defendant's hands, since there was evidence showing that after the purchaser took possession, the wear and tear of the steering mechanism was negligible.

Plaintiffs wil prove, during the course of Trial, each and every allegation set forth in their complaint. This being so, Plaintiffs are not required to prove their case by Motion for Summary Judgment or during the hearing on such a motion. The conclusion then, is inescapable, the Motion for Summary Judgment does not attain and should be dismissed, less Plaintiffs are denied their day in Court.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs
918 F Street, N.W. (302)
Washington, D.C. 20004

(13)

CERTIFICATE OF SERVICE

Copy of the foregoing pleadings mailed, postage prepaid, to Law Offices, Hogan & Hartson, 815 Connecticut Ave.,N W., Washington, DC., Frank L. Robinson, Esquire, this 19th day of April, 1967.

s/Clement Theodore Cooper
Clement Theodore Cooper
Attorney for Plaintiffs

(121)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER ETC. ET AL, Plaintiffs	)	
v.	)	Civil Action No. 727-66
CENTER MOTORS, INCORPORATED, Defendant	)	

Washington, D. C.

Tuesday, May 16, 1967

Before the Honorable WILLIAM B. JONES, United States District Judge, on defendant's motion for summary judgment.

Appearances:

In behalf of plaintiffs:

Mr. CLEMENT THEODORE COOPER

In behalf of defendant:

Mr. FRANK F. ROBERSON

Mr. CARL L. TAYLOR

- - -

-- P R O C E E D I N G S --

THE DEPUTY CLERK. Hunter versus Center Motors, Incorporated.

THE COURT. Mr. Roberson.

MR. ROBERSON. This is a motion for summary judgment by Center Motors, Incorporated. It is an action for wrongful death arising out of an accident that occurred just north of Richmond, Virginia on March 22, 1965. A man named Hector Hunter was the driver of that car.

In January, 1964 --

THE COURT. I have read the papers.

MR. ROBERSON. He had bought an old automobile. It was six years old when he bought it. Late one Saturday night, with ten people in the car, they went to a funeral and drove around; and late Sunday night they started back, and this accident happened just north of Richmond, Virginia, when he drove off the parkway, 95, and went 75 feet into a tree. There were 11 people in this six-passenger car. Five of them were killed. There was no other car involved. There was only one outside witness to the accident.

THE COURT. The truck driver.

MR. ROBERSON. The truck driver, Minson.

THE COURT. What I am a little bothered about, Mr. Roberson, from the deposition here of -- is it Armstrong?

MR. ROBERSON. Yes, sir. He was 19 years old at the time, and occupied the right front seat, with four other people. There were five in the front seat. On his deposition he testified that just after they had passed this vehicle that the eyewitness was in, his uncle turned to him and said, "Elmer, the steering gear is locked; I can't control the car." And he says to his uncle, "Jam on the brakes." And he said his uncle jammed on the brakes and nothing happened, and they went on and hit this tree 170 feet later.

Mr. Minson saw this car when it went past him, and saw Armstrong with his head on his arm as if asleep, and also that the driver was dozing -- who had gone 48 hours without any sleep and who was doing all the driving.

We say that Elmer Armstrong's deposition, if received in a trial, would not be sufficient to support a verdict. And we base our position in that on WM&A Motor Lines against Maske, in which it is pointed out that the defendant's testimony about the cause of the accident was uncorroborated, and it was proved beyond a reasonable doubt that she had made a previous contradictory statement to her doctor.

Armstrong, too, when interviewed in the hospital, told the officer he knew nothing about the accident because he was asleep at the time.

So we say Armstrong's testimony would be insufficient to establish that the accident was caused by any mechanical failure, as distinguished from his uncle's going asleep and driving off the road. I think that is correct under Maske against WM&A. But even if wrong about that, I don't think the fact that you have a six-year-old car you buy and drive for 14 months, with the exception of three weeks when he failed to keep up his payments -- in any event, except for the period from December 12 to January 5th, 1965, he drove it. He took it back January 5, 1965, and this accident didn't happen until the 22d of March. So he had it for 11 weeks, less one, I believe, before this accident happened.

THE COURT. And the only work done by the Center Motors was back, I believe, in March of 1964, when it was being fixed up to pass inspection?

MR. ROBERSON. And the only warranty he had under his contract was he bought it as is, except "We will warrant a reduction in price of anything necessary to make it pass the D. C. inspection." It failed the D. C. inspection first in 1964, in March. They brought it back and we did a good deal of work, and it passed the D. C. inspection in April, 1964.

THE COURT. Was there any examination of the brakes?

MR. ROBERSON. There probably was. It seems to

me they worked on a lot of things in connection with the repairs, back at that time. But, in any event, the only warranty was that it would pass the inspection -- which it had done 11 months before this accident occurred.

We have cited cases from North Carolina, from Kentucky and from the federal district court in Michigan, to the effect that even with a relatively new car you can't relate a mechanical defect, if it occurs at the time of an accident, back and hold the original seller liable. Some of the cars involved in those cases were three or four months old. Here we have one that was not only six years old, but it had been driven by this man himself for 14 months, with the exception of the three or four weeks when it was in our possession back late in 1964 and the first five days in 1965. It doesn't make out a case where they could go to the jury on anything except speculation. In the first place, there is no substantial evidence to support it, because the only thing they have is Elmer Armstrong's testimony which, under Maske, is not sufficient to establish that the accident was caused by mechanical defect. And, No. 2, even if it is, we say that is insufficient to relate liability back to someone who had sold him a car 15 months before -- particularly in view of the limited warranty, and that was fulfilled.

THE COURT. Where is the negligence in this case?

Is this a negligence case, or is this a breach of warranty?

MR. ROBERSON. Well, he has 11 counts.

THE COURT. I know he has. But what is the liability, if any, of Center Motors? Is it on negligence or breach of warranty?

MR. ROBERSON. If there were liability, I suppose it could be on either count. But I think as a matter of law he is unable to demonstrate negligence. I don't think, on breach of warranty, since we have a warranty that was performed, and it was a 30-day warranty, and the thing did pass the D. C. inspection, I don't think you guarantee these cars forever.

THE COURT. Does the seller of a used automobile have any duty of care to see that the brakes are in a near perfect condition, as perfect as you can make brakes; or is there a law on that?

MR. ROBERSON. I don't think so. He sold it as is, except for a specific warranty.

THE COURT. And that was to make it good for 30 days?

MR. ROBERSON. To make it good for 30 days, and to make any reduction in charges for anything necessary to make it pass the D. C. inspection -- with some specific exceptions -- and they did fulfill that.

No dealer in cars can warrant a car driven 14 months, a six-year-old car, is never going to develop any mechanical trouble.

They had had no trouble with this car on the way down. They had driven from Washington to Godwin, North Carolina, wherever that is. And according to Armstrong and the other surviving near adult, they had no trouble on the way down. The uncle had announced that the car worked all right. And they had no trouble up to the time of the accident.

THE COURT. I will hear you, Mr. Cooper.

MR. COOPER. I think, Your Honor, this is a case which probably requires a splitting of hairs and refinement of the facts.

THE COURT. In the first place, it requires you to file a statement of facts which are controverted here, doesn't it, under the rules?

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MR. COOPER. Yes, Your Honor. I failed to do that. I filed a memorandum of points and authorities.

THE COURT. That isn't what the rule says, though, is it? Anyhow, you can file it.

I take it your position is that everybody has a right to his day in court, and that the issue raised by the pleadings is sufficient to contravene a summary judgment. Is that your position?

MR. COOPER. Well, that is one of our positions, Your Honor.

THE COURT. You say more than that. You say:

"Under clear construction of Rule 56 of the Federal Rules of Civil Procedure the defendant's motion is groundless for the reason that plaintiffs' allegations in their complaint and their contention of facts must be accepted as true, and they must be given the benefit of the most favorable inference which reasonably can be drawn therefrom. Courts have held, time and time again, that a motion for summary judgment may not serve as a substitute for a trial of disputed issues of material facts."

Is that the point you make?

MR. COOPER. That is one of the points I make.

THE COURT. Let us go to your next point.

MR. COOPER. We allege in the complaint negligence and breach of warranty. And if the Court refers to the complaint filed here you will note, in paragraph 7, we specify acts of negligence by the defendant. In (a) we say the defendant failed to inspect the automobile before reselling it, to determine whether its transmission and steering were in proper working order, and (b) failed to warn the plaintiff's intestate that the transmission and steering in said automobile

were in defective condition.

We allege this based on an inspection made by the Department of Motor Vehicles, setting forth specific defects they found in this automobile when it was taken for inspection.

THE COURT. This is in 1964, the year before?

MR. COOPER. Yes, Your Honor.

THE COURT. Did they say anything about the brakes at that time?

MR. COOPER. Yes, sir -- if you will refer to the answers to interrogatories, which were filed, I think Interrogatory No. 49 and the answers there, Your Honor.

THE COURT. To the interrogatories addressed to whom, Mr. Cooper?

MR. COOPER. Thomas S. Hunter.

THE COURT. Thomas S. Hunter. All right, let me find it. Forty-nine, you say?

MR. COOPER. Yes, sir -- and the answer to that interrogatory.

THE COURT. I am just getting to it. Let me read it.

Now, Thomas S. Hunter --

MR. COOPER. Is the administrator of the estate.

THE COURT. And Hector Charles Hunter was the one

who bought the car?

MR. COOPER. Yes, Your Honor.

THE COURT. Go ahead. I understand that now. Your point is that in March of 1964 Center Motors did repair the brakes; is that correct?

MR. COOPER. Yes, Your Honor.

THE COURT. And what was it?

MR. COOPER. On April 8th they took the car for inspection, and it was denied passage for inspection for the following reasons. The District found steering alignment defective, auxiliary brakes defective, brake equalization defective, directional signal defective, rear lights defective, steering operation defective, including king pins, ball joints, worm and sector, tie rod ends, drag link, control arms, shock absorbers, springs and shackles, axles, wheel bearings, re-alignment. And it was taken back to Center Motors for corrections.

Your Honor, I am saying in a case like this, if the Court is going to follow the modern cases coming out in other jurisdictions, and which this Court will probably follow, then the doctrine of strict liability will probably come into play. We don't contend a used car dealer is under a duty to guarantee safety through the life of the car. But we are talking about a case where a purchaser did appear at Center Motors and

purchased a grossly defective automobile. And I would like to add at this point, Your Honor, that after it was taken back to Center Motors and mechanical repairs were made -- as is the case with most used car dealers -- they will make the mechanical repairs not substantially correct, but correct to the extent it will pass inspection.

THE COURT. That is my next question. After the D. C. inspection noted all these various defects you have mentioned, it was then taken back to Center Motors and repairs were made, and then it did pass inspection after that?

MR. COOPER. It did pass inspection.

THE COURT. And that was in April, 1964?

MR. COOPER. That is correct, Your Honor.

THE COURT. And this accident happened in March, 1965?

MR. COOPER. That is correct.

THE COURT. What happened between April of 1964 and March of 1965? Were any repairs made or anything done to the car in the meantime?

MR. COOPER. I don't think there was, Your Honor. If you will note in the deposition, this car was taken back to Center Motors because it was still in very poor condition. The defendant alleges that the car was repossessed. That car wasn't repossessed. Hector Hunter himself took that car back

to Center Motors and told them he didn't want it, it was a death trap, a piece of junk. He refused to pay for the car. They garnisheed his wages, and his employer advised him to go back and get the car. And he went back and got the car and resumed payments.

THE COURT. He resumed driving it, too, didn't he?

MR. COOPER. He resumed driving it.

THE COURT. Did he think it was a death trap when he resumed driving it?

MR. COOPER. He said it was a death trap when he took it back to Center Motors.

THE COURT. What did he say when he was driving it?

MR. COOPER. He didn't say it was a death trap when he was driving it.

THE COURT. He said it was a death trap when he wanted them to take it back.

MR. COOPER. When he wanted them to take it back, sure. But Hector Hunter, personality-wise, was not a gentleman who would press an issue. And after a suit was filed against him and he was placed in fear of losing his job, he went back and took the car. There was some degree of coercion. It wasn't of his own free will that he went back. He felt bound to honor this contract.

It was while he was operating this automobile back

from North Carolina that this accident occurred, because the steering mechanism locked. And when he jammed on the brakes he was unable to control the car.

There was a deposition taken and my investigator made contact with Minson's mother. Minson apparently is a person who wanders from place to place through the State of Virginia. His mother told my investigator she didn't know when she would be seeing him. Apparently the defendants found Mr. Minson and he made it to this deposition to testify that he noticed the driver of the car was asleep. I can't see how anyone in a moving vehicle could notice all the things Mr. Minson said he noticed in his deposition. Mr. Minson should be brought in at a trial and be subjected to the crucible of cross-examination.

THE COURT. Didn't you "crucible" him when he gave his deposition?

MR. COOPER. Well, Your Honor, at the time I contacted a law firm in Virginia to see whether they could appear for this deposition in Richmond and examine this man, and the partner was out of town who would normally go. So no one appeared at the deposition in behalf of the plaintiffs. The defendants set the deposition up for Richmond, Virginia. Had it been on some other date, he would have appeared. And I believe I called Mr. Roberson and told him I couldn't appear.

THE COURT. You are bound by the deposition.

MR. COOPER. I am bound by the deposition; but I am still under a duty to cross-examine him as to wha t he said in the deposition, at a trial.

THE COURT. He may not even be at the trial.

MR. COOPER. That is true. But if he is not at the trial, they must establish a foundation for having his deposition.

THE COURT. He can be a hundred miles away.

MR. COOPER. Being a hundred miles away is not sufficient ground to have his deposition entered, unless there are other reasons why he cannot appear.

THE COURT. In any event, where is his home?

MR. COOPER. Mr. Minson's?

THE COURT. Yes, where is Mr. Minson's home?

MR. COOPER. Somewhere in Virginia, from Richmond to several other towns, I understand.

THE COURT. Is there anything else you want to add?

MR. COOPER. We have cited cases and made attempts to show the Court which position the courts are taking in these products liability cases. This is not a case where one person was injured. We have several lives lost because of a defective automobile. I think in all fairness to both sides this case should be litigated.

THE COURT. I will take the motion under advisement.

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REPORTER'S CERTIFICATE

This record is certified by the undersigned reporter of the United States District Court for the District of Columbia to be the official transcript of the proceedings indicated.

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(137)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS S. HUNTER, Administrator of Estate of HECTOR CHARLES HUNTER, et al., Plaintiffs	)	
v.	)	Civil Action No. 727-66
CENTER MOTORS, INCORPORATED, Defendant	)	

ORDER

This cause came on to be heard upon Defendant's Motion for Summary Judgment in its favor, and after consideration of the same and arguments of counsel, it is by the Court this day of MAY , 1967,

ORDERED, that the motion be granted and that judgment be, and hereby is, entered in favor of defendant Center Motors, Incorporated.

s/
United States District Judge

CERTIFICATE OF SERVICE

A copy of the foregoing Order was mailed, postage prepaid, this 29th day of May, 1967, to Clement Theodore Cooper, Esq., Attorney for Plaintiffs, 918 F Street, N.W. (302), Washington, D.C. 20004.

HOGAN & HARTSON

By s/Carl L. Taylor
Carl L. Taylor
Attorneys for Defendant

(138)

United States District Court for the District of Columbia

THOMAS S. HUNTER, et al — *Plaintiff.*

vs.

CENTER MOTORS, INC. — *Defendant.*

CIVIL No. 727-66

NOTICE OF APPEAL

Notice is hereby given this 16th day of JUNE, 1967, that the Plaintiffs, THOMAS S. HUNTER, and other hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31st day of May, 1967 in favor of the Defendant, CENTER MOTORS, INCORPORATED against said Plaintiffs, THOMAS S. HUNTER, and others

Attorney for Plaintiffs

918 F Street, N.W. (202)
Washington, D.C. 20004
Executive 3-3900

LAW OFFICES
ADAMS & HARTSON
Attorneys for Defendant
815 Connecticut Ave., N.W.
Washington, D.C.

NOTICE OF APPEAL. 73 (2)

(139)

United States District Court for the District of Columbia

THOMAS S. HUNTER, Et Al
Plaintiff.

vs.

CENTER MOTORS INC.
Defendant.

CIVIL No. 727-66

NOTICE OF APPEAL

Notice is hereby given this 23rd day of July, 19 69, that

Thomas S. Hunter, Et. Al., Plaintiffs,

hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 15th day of July, 19 69

in favor of Defendant, Center Motors, Inc.

against said Plaintiffs, Thomas S. Hunter, Et. Al.

Clermont Hunter Cook
Attorney for Plaintiffs

918 F Street, N.W. (202)
Washington, D.C. 20004

Excerpts from transcript of testimony of Harvey C. Smith.

THE COURT: You may proceed, Mr. Cooper.

MR. COOPER: Thank you, Your Honor.

BY MR. COOPER:

Q Now, Mr. Smith, did you at that time, make a written record of the defects noted on the records in the Motor — Department of Motor Vehicles pertaining to this 1958 Ford Fairlane 500?

A Yes, I did.

Q Would you refresh your recollection by referring to that list?

A The defects of this 1958 Ford Fairlane are as follows:

Steering alignment, defective.

Auxiliary brakes defective.

No. 3, directional signals defective.

No. 4, brakes equalization defective.

No. 5, rear lights defective.

No. 6, steering operation defective, which incudes King Pins, Ball Joints, worm insector, tie rod ends, drag link, control arms, shock absorbers, spring and shackles, axle, wheel bearing and realignment.

The automobile again was taken for inspection on April 8, 1964. At that itme, it was passed.

MR. COOPER: I have no further question of this witness.

THE COURT: All right.

MR. ROBERSON: No questions.

THE COURT: You may step down.

MR. COOPER: Your Honor, at this time, I would like to offer that in evidence.

MR. ROBERSON: Objection. Your Honor, I don't think it is admissible in evidence. He has refreshed his recollection.

THE COURT: Mr. Cooper, it will be marked for identification but the objection will be sustained at this time. You say Mr. Dorsey is coming over?

MR. COOPER: Yes, Your Honor. He is.

MR. COOPER: If the Court please, Mr. Dawson is on his way over here. It is just a short walk.

THE COURT: All right. You may take a few minutes, ladies and gentlemen. Mr. Dorsey is just across the street, so he will be over here in a few minutes.

(BRIEF RECESS)

(12:12 P. M.)

THE COURT: All right. You may proceed.

MR. COOPER: Your Honor, at this time, I would like to call Mr. Noel K. Dawson.

Whereupon,

NOEL K. DAWSON

called by plaintiffs having been duly sworn, was examined and testified as follows:

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23, 559

THOMAS S. HUNTER, ET.AL.

Appellants

vs.

CENTER MOTORS, INCORPORATED,

Appellee

Motion For Reconsideration and

Rehearing.

CLEMENT THEODORE COOPER

918 F Street, N.W.
Suite 300-302
Washington, D.C. 20004

ATTORNEY FOR APPELLANTS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THOMAS S. HUNTER, ET. AL. Appellants	)	
vs.	:	Appeal No. 23, 559
CENTER MOTORS, INCORPORATED, Appellee	)	

MOTION FOR RECONSIDERATION AND REHEARING

Comes now the Appellants and Moves this Honorable Court for Order Granting Reconsideration and Rehearing in the above Captioned Cause and state as grounds therefor the following matter and things :

1. The cause herein came before this Honorable Court on two occasions. The First Appeal came before this Court on February 6, 1968 from an Order granting Summary Judgment to the Appellees. The Court held, on August 23, 1968, the "the depositions created a material issue of fact as to whether the accident was caused by mechanical defect or by the driver's having gone to sleep". See Hunter, et al. v. Center Motors, Inc. 130 U.S. App. D.C. 315, 400 F. 2d 786 (1968). The cause proceeded to Trial and the Trial Court directed a Verdict for the Appellees. Appellant again perfected an appeal to this Honorable Court. This Court, on October 16, 1970, affirmed the trial Court's ruling. See Hunter, et al. v. Center Motors, Inc., Appeal Number 23,559.

2. This Honorable Court's ruling in the Second Appeal, affirming the Trial Court's ruling directing a verdict for the Appellee is inconsistent with the same Court's ruling in the First Appeal. Logically, the very same depositions which were before the Court during the First Appeal became live evidence during the course of the Trial. If, as this Court ruled in the First Appeal, that the depositions created a question of material fact on the issue as to whether the accident was due to mec-

hanical defect or the driver having gone to sleep, supposedly, the Court clearly indicated that only a jury could decide those questions of fact. Yet, during the second Appeal, where the same depositions were before the Court but took the character of "live evidence", this Court arrived at a completely different result.

3. That this Court ruling affirming the Trial Court's Order raises grave constitutional considerations as to whether or not by the direction of a verdict where there is evidence which creates a material issue of fact, such a ruling constitutes a denial of Trial by Jury under the Seventh Amendment of the United States Constitution.

4. The gravity of the deaths and personal injuries involved herein must take precedent over strict construction of rules of evidence particularly where appellants have, in fact, presented evidence in support of their claims.

5. In this age of enlightenment, not only does the Appellants need protection but the general consumer public needs protection from overreaching by Used Car Dealers and others. Public Policy outweights strict construction of rules of evidence where lives are loss and bodily injuries sustained obviously resulting from defects in a dangerous instrumentality at the time of the sale.

6. The Court, appellants feel, inadvertently based it's decision on an issue which was not decisive of a review of the Trial Court's ruling in Granting a Directed Verdict, in light of this Court ruling in the First Hunter Appeal, supra. The burden was not upon Appellants to show, during the trial of the cause, the record relating to the interval of time between the date on which the automobile first passed inspection and the date on which the fatality occurred.(See Page 3, Hunter, et al. v. Center Motors, Appeal No, 23,559). To place such a burden upon the plaintiffs during the Trial obviously forces them into

a position of establishing contributory negligence which would ultimately bar their suit. The burden of going forward with the evidence falls squarely upon the shoulders of the defendant not the plaintiff.

7. The Appellee conceded that "it must be assumed that mechanical failure was the cause of the accident."(See page 2, Hunter, et al. v. Center Motors, supra.).

8. The fact that the automobile in question was six years old does not foreclose proof that the accident was due to mechanical failure as admitted by the Appellee.

9. This Honorable Court should re-examine the broad scope of factual history and proof in the cause in light of this Court's ruling that:

> " With no evidence whatsoever in the record relating to this interval of time, which added another year to the life of an already old car, we must agree that there was no basis for submitting to the jury the question of whether any negligence of which appellees may have been guilty on the day of sale was the operative cause of the accident." (pp. 3, Hunter v. Center Motors, supra.)

10. Appellants, upon filing the appeal,respectfully requested this Honorable Court to decide the type and extent of liability and duty of used car dealers in dealing with the Consumer. The Court in it's opinion indicated that it did not have occasion to decide those questions. Upon filing of this Motion for Rehearing and Reconsideration, Appellants again respectfully request this Honorable Court to deal with those questions for, as far as Appellants know, the ultimate resolution

of those questions might very well change the course of this Court previously ruling.

11. For such other and further reasons as will be argued during the Hearing on this Motion.

WHEREFORE, Appellants respectfully pray that this Honorable Court will grant Reconsideration and Rehearing in the above captioned cause.

CLEMENT THEODORE COOPER
Attorney for Appellants
918 F Street, N.W. (302)
Washington, D.C. 20004

CERTIFICATE OF SERVICE

Copy of the foregoing mailed, postage prepaid to Law Offices, Hogan & Hartson, 815 Connecticut Avenue, N.W., Washington, D.C. this 5th day of March, 1971.

CLEMENT THEODORE COOPER
Attorney for Appellants